

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS

3 JAMES M. CYZE,)
4 Plaintiff,)
5)
6 -vs-) No. 07-L-003638
7)
8 R.R. DONNELLEY & SONS COMPANY,)
9 a Delaware corporation and)
10 successor in interest to BANTA)
11 CORPORATION, a Wisconsin)
12 corporation, STEPHANIE A.)
13 STREETER, an individual, and)
14 MICHAEL B. ALLEN, an individual,)
15 Defendants.)

16 _____)

17 The deposition of MICHAEL BRENNAN

18 ALLEN, called by the plaintiff for examination,

19 pursuant to notice, and pursuant to the provisions of

20 the Rules of Civil Procedure for the District Courts of

21 the United States, taken before Judy A. Landauer, CSR,

22 a Certified Shorthand Reporter and Notary Public within

23 and for the County of Cook and State of Illinois, at

24 321 North Clark Street, Suite 2800, Chicago, Illinois,

19 on January 8, 2009, at the hour of 10:00 o'clock A.M.

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1 P R E S E N T :

2 STEPHEN P. CARPONELLI, ESQ.
 (of the firm of Messrs. Carponelli & Krug,
 3 230 West Monroe Street, Suite 250,
 Chicago, Illinois 60606)
 4 appeared on behalf of the plaintiff;

5 MICHAEL A. BOWEN, ESQ.
 (of the firm of Messrs. Foley & Lardner,
 6 LLP, 777 East Wisconsin Avenue, Milwaukee,
 Wisconsin 53202-5306)
 7 appeared on behalf of the defendants.

8

9 I N D E X

10 WITNESS

11 Michael Brennan Allen

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1 MR. CARPONELLI: Let the record
2 reflect that this is the deposition of
3 Michael Allen taken pursuant to notice,
4 from time to time continued until this
5 date, time, and place, and let the record
6 further reflect that this deposition is
7 being taken in accordance with the
8 applicable provisions of the Federal Rules
9 of Civil Procedure.

10 MICHAEL BRENNAN ALLEN
11 having been first duly sworn, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CARPONELLI

15 Q. Would you state your name, please?

16 A. Michael Brennan Allen.

17 Q. Mr. Allen, would you give me your
18 current address, please?

19 A. 433 South Lincoln Street, Hinsdale,

20 Illinois 60521.

21 Q. And how long have you lived at that

22 address?

23 A. Approximately 19 years.

24 Q. And with whom do you reside there?

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1 A. With my wife and my two children.

2 Q. Okay. And are you currently
3 employed?

4 A. I am currently C.E.O. of a company
5 called Leveler Protective Technology.

6 Q. And where are they located?

7 A. Downers Grove, Illinois.

8 Q. And what do they do?

9 A. It's a small technology startup.

10 They have some patents, and we're trying to get
11 product manufactured and developed into the
12 market.

13 It's a small six-person company.

14 Q. Okay. Are you an owner?

15 A. No.

16 Q. Is it owned by a private equity
17 group?

18 A. Now, it's a -- it's a private LLC.

19 Q. Okay. Are any of the investors

20 affiliated with Madison Partners, Madison Dearborn

21 Partners?

22 A. No.

23 Q. Okay. What is your current age?

24 A. I'm 49.

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1 Q. And the date of your birth?

2 A. November 18, 1959.

3 Q. And your Social Security number?

4 A. 360-58-7240.

5 Q. Do you have any military service?

6 A. No, I do not.

7 Q. Okay. And you have no criminal

8 record?

9 A. I have no criminal record.

10 Q. Could we go through your education

11 just briefly?

12 A. I assume you mean just college

13 education?

14 Q. Sure.

15 A. I went to Lawrence University in

16 Appleton, Wisconsin and graduated in 1982 with a

17 B.A.

18 MR. CARPONELLI: Off the record.

19 (Whereupon a discussion

20 ensued off the record.)

21 MR. CARPONELLI Q. Do you belong to any

22 professional associations?

23 THE WITNESS A. No.

24 Q. Okay. Have you received any awards

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1 for competence or excellence as it relates to
2 business management or anything like that?

3 A. Not outside of the companies that I
4 was employed by.

5 Q. Okay. What is your expertise in
6 terms of business generally, would you say?

7 A. I'm not sure I understand.

8 Q. Are you a marketing guy, a numbers
9 guy?

10 A. I started my career with R.R.
11 Donnelley and I was in sales, and then after seven
12 years or so in sales I moved into management and
13 then moved through a number of general management
14 ranks, different business units that I ran.

15 Q. So would you say that your expertise
16 is management?

17 A. Yes, I would say the vast majority of
18 my business career has been in management, and

19 prior to that it was in sales.

20 Q. Okay. Could you basically run

21 through your employment history with me, beginning

22 with your current employer, Leveler, and tell me

23 how long and then just take it back for 15 or 20

24 years?

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1 A. I joined Leveler in January of 2008.

2 Prior to that I worked for Banta Corporation as
3 the print sector president.

4 I joined Banta in January of 2004 and
5 was discharged from the company in January of
6 2007, I guess that was, when R.R. Donnelley
7 completed the acquisition of Banta.

8 Q. Okay.

9 A. Prior to Banta I spent -- I'd have to
10 go through the actual math, but about 21 years
11 with R.R. Donnelley.

12 And if you want me to go in reverse
13 order of what I did for R.R. Donnelley, the last
14 position was executive vice-president reporting to
15 the chairman with responsibility for sales and
16 marketing of Donnelley Print Solutions.

17 Q. Was the chairman at that time, the
18 last chairman, was that Mark Engelson?

19 A. No. R.R. Donnelley and Moore Wallace

20 came together, combined in 2004, after I had left.

21 Q. And that's when Engelson took over?

22 A. Yes. So prior to being executive

23 V.P. of Donnelley Print Solutions -- that position

24 started in 2000 -- 2001, I believe it was. It

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1 might have been in 2002.

2 Prior to that I was executive
3 vice-president over what we called core commercial
4 print, which was a combination of the printing
5 businesses for magazines, catalogues, and retail
6 inserts.

7 Those three businesses and they --
8 and their respective presidents reported to me at
9 Donnelley.

10 I was in that position starting in
11 2000. Prior to that I was president of R.R.
12 Donnelley's book printing business unit.

13 I took that position in late 1997.
14 Prior to that I was president for a very short
15 period of time for R.R. Donnelley's information
16 services group.

17 That was only a nine-month stint. We
18 shut down that business. Prior to that I was

19 president of R.R. Donnelley's retail printing

20 services group.

21 That started in -- I'd have to check

22 my resume, but 1995, I think it was. Prior to

23 that I was senior vice-president of sales and

24 marketing for retail services, and that was from

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1 1993 to 1995, if I recall.

2 You want me to keep going all the way
3 back?

4 Q. No, that's good enough.

5 A. There's only like two or three other
6 positions.

7 Q. Yes. That's good enough. Thank you.
8 That was comprehensive. I appreciate it. Now,
9 I'm going to call your attention to the period of
10 time from January of '04 to January of '07.

11 If you could give me a breakdown in
12 January of '04 to January of '07, which is the
13 time you worked at Banta, let me know what your
14 positions were, and then I'll ask you about your
15 duties and responsibilities.

16 A. I had only the one position that
17 I -- that I mentioned. I was executive -- excuse
18 me.

19 I was print sector president.

20 Q. Okay. And who reported to you?

21 A. When I joined the company in January

22 of '04 I had four business unit presidents

23 reporting to me.

24 In the middle of '04 we added a fifth

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1 business unit as a result of a small little
2 restructuring that we had, so for the balance of
3 time I had five presidents reporting to me, until
4 the restructuring in July of 2006, when we
5 consolidated down to two direct reports.

6 Q. Okay.

7 A. I can give you the names, if you need
8 them.

9 Q. In the -- and correct me if I'm
10 wrong. One of the direct reports to you during
11 this entire period of time was Jim Cyze?

12 A. Yes.

13 Q. And how often did you interact with
14 him during this period of time, let's say, '04 to
15 '07?

16 A. I would have interacted with Jim Cyze
17 several times a week. We both worked in the same
18 physical office in Oak Brook, Illinois, but, you

19 know, travel schedules and things might be such

20 that I wouldn't see Jim every day.

21 Q. Okay. And did you report to

22 Stephanie Streeter?

23 A. I did report to Stephanie Streeter.

24 Q. Okay. And correct me if I'm wrong.

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1 The five group presidents that reported to you did
2 not report to Stephanie Streeter?

3 A. No, they reported to me throughout
4 the entire time that I was at Banta.

5 Q. Okay. How often did you interact
6 with Stephanie Streeter throughout the period of
7 January '04 through January '07?

8 A. I would interact with Stephanie
9 multiple times a week, sometimes by phone,
10 sometimes face to face.

11 Q. Where was her office?

12 A. Her office was in Nina -- excuse me,
13 Menasha, Wisconsin, which is where the corporate
14 headquarters was.

15 Q. Would you travel up there on
16 occasion?

17 A. I would travel up there usually every
18 couple of weeks. I usually would go up, spend a

19 night or two, and then drive back home.

20 Q. Okay. When she interacted with you

21 would on occasion she come down to the Oak Brook

22 office or would you always go to Menasha?

23 A. No, on occasion she'd come to

24 Oak Brook.

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1 Q. Okay. How often?

2 A. I would say Stephanie would be in the
3 Oak Brook office quarterly. We also would
4 interact at various facilities.

5 We would get around to various
6 offices and manufacturing locations as a practice,
7 so that we could interact with people who were out
8 in the field.

9 Q. Okay. During this period of time
10 while you were at Banta did you interact with Mr.
11 Kneezel?

12 A. I did interact with Ron Kneezel.
13 Ron Kneezel was our general counsel and secretary.

14 Q. And how often?

15 A. I would interact with Ron Kneezel
16 several times a month. If we were involved in
17 a -- in a project I might interact with Ron
18 several times a week.

19 Q. And where was he located?

20 A. Ron was also in the corporate

21 headquarters in Menasha, Wisconsin.

22 Q. Okay. Did you know Jim Cyze before

23 you went to work for Banta?

24 A. Yes. The first time I met Jim Cyze

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1 was in the fall of 2003, when he interviewed me
2 for the position at Banta.

3 Q. What position was that?

4 A. The position I was ultimately hired
5 into, president of the print sector.

6 Q. And how did it happen that he was
7 interviewing for the president of the print
8 sector?

9 A. I don't know. I would speculate that
10 he had been asked by Frank Rudolph, the head of
11 corporate HR, and by Stephanie Streeter to
12 participate.

13 I interviewed with all of the people
14 who would ultimately report to me.

15 Q. Okay. Did you know him at all when
16 you worked at Donnelley?

17 A. No, I did not know Jim.

18 Q. Okay. Did you know he had worked at

19 Donnelley?

20 A. I did after -- when we interviewed

21 together we shared experiences from Donnelley. He

22 worked in the financial printing unit of R.R.

23 Donnelley.

24 And I don't expect you to remember

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1 all of the units that I worked in at Donnelley,
2 but it was one of the units I had never worked in,
3 never had any responsibility for.

4 Q. Okay. Did you have an impression of
5 Cyze's competence when you met him for the first
6 time?

7 A. I'm sure I had an opinion at the
8 time, but I don't remember what it would have been
9 in the fall of '03.

10 Q. But you hadn't actually interacted
11 with him before the interview?

12 A. No. I met him -- we met at an
13 off-site location. It was the Drake Hotel in
14 Oak Brook.

15 I met with him and I met with two
16 other people in separate meetings, as I recall.

17 Q. Okay. Did you voluntarily leave
18 Donnelley?

19 A. Yes.

20 Q. So have you ever been the subject of

21 a termination or a suspension of your work

22 activities?

23 A. Well, I was terminated from Banta

24 after the acquisition by R.R. Donnelley. I've had

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1 my position eliminated when I was inside of
2 Donnelley as a result of restructurings, where
3 that came close to me having to leave the company,
4 but ultimately I found alternative positions
5 inside the company.

6 Q. Okay. Were you involved in the
7 decision to terminate Jim Cyze?

8 A. Yes, I was involved in terminating
9 Jim Cyze and the decision to do so.

10 Q. Okay. Can you remember, when was the
11 first time that you discussed the termination of
12 Jim Cyze?

13 A. The termination of Jim Cyze was
14 related to the print sector restructuring that was
15 publicly announced in July of 2006. We began
16 planning that in February of 2006.

17 The first time I would have discussed
18 with Stephanie Streeter who I thought should go

19 into the remaining positions would have been in

20 the March/April time frame of 2006.

21 Q. Okay. Do you have notes or memos

22 that reflect your -- that concept that --

23 A. I'm not in possession of any of the

24 notes. When I was terminated from Donnelley I

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1 left all of my --

2 Q. Okay.

3 A. -- work correspondence there.

4 Q. And it's your recollection that you

5 did have some notes dating back to March or April

6 as it related to Cyze and his termination?

7 A. There are -- there were -- there were

8 notes, there were -- we had -- a little

9 background.

10 The discussion around the print

11 sector restructuring was part of the strategic

12 planning process that we did annually at the

13 company, so we had -- we had work plans that were

14 laid out that I was involved in.

15 Sara Armbruster was involved in

16 driving that process, so there had been notes and

17 documents associated with that.

18 When the initial discussion about the

19 print sector restructuring was raised with
20 Stephanie she asked me to come back -- in the
21 initial meeting there were no documents that I
22 remember.
23 There may have been handwritten
24 notes.

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1 Q. And when was that initial meeting?

2 A. That would have been about February
3 of 2006.

4 Q. Okay.

5 A. That was with Sara Armbruster and
6 Stephanie Streeter in Stephanie's office, and it
7 was part of our discussions about the strat
8 planning process and the review process that we
9 were going to have for '06.

10 Q. And you're saying strategic planning
11 process --

12 A. Yes.

13 Q. -- and review plan?

14 A. Right. Every year we would do -- we
15 would -- we would start every year with a
16 strategic planning process that culminated with a
17 two-day strategic review with our Board of
18 Directors at the July Board meeting.

19 Q. Okay.

20 A. And we started that in February,
21 because Sara -- we always started early, but I
22 remember starting it particularly early in '06,
23 because Sara was leaving on pregnancy leave.

24 Q. Okay. Correct me if I'm wrong. Is

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1 it true that the strategic planning review
2 sessions were somewhat freeform and did not become
3 firm until sometime before the Board meeting that
4 took place annually, if you know?

5 A. In my experience at Banta, which is
6 '04 to '07, the strategic planning process was not
7 freeform. It was structured.

8 It was very detailed. We put a lot
9 of effort into it both at the corporate level and
10 at the individual business unit level.

11 Q. But when you're talking about the
12 strategic plan, wasn't it originally formed in
13 '04?

14 A. The strategic plan -- there may have
15 been strategic plans -- in fact, I know there were
16 strategic plans prior to '04.

17 Q. Okay. But the one -- the first one
18 that you were involved in --

19 A. The first one I was involved in was

20 in 2004, because I wasn't employed.

21 Q. And that's the one that has the four

22 cornerstones?

23 A. Right. We did some work -- we did a

24 very extensive amount of work in the strategic

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1 planning process. We set out a long-term
2 strategy.

3 The way the process worked inside
4 Banta, and even when I was at Donnelley, was you
5 would start the year reviewing the long-term
6 strategy of business.

7 You would go into a structural review
8 to make sure that the structure that you had in
9 place was consistent with what you were trying to
10 do strategically.

11 In the summer you would do an HR
12 review to make sure you had the talent so that you
13 could execute the strategy, and then you would
14 culminate with an annual operating budget that was
15 created in the fall consistent with the long-term
16 strategy that you would then execute in the
17 following year, and then the process would begin
18 anew after the first of the year with a new

19 strategic planning review.

20 Hopefully you don't change your

21 strategy frequently, but you do it annually, so

22 that you can make adjustments, if necessary.

23 Q. Okay. So the original strategic plan

24 went into effect in '04. You were involved in

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1 that, and then there was an annual update on that,
2 is that correct?

3 A. There were annual updates. We did an
4 annual update in '05, and then we modified the
5 strategy in '06.

6 Q. Okay. And that would have started in
7 February, and when would it have been -- when
8 would it have been finalized on the '06
9 modification?

10 A. We would have started it -- we would
11 have started it in January/February of 2006 as
12 part of the normal process.

13 It would have gone to the Board for
14 the two-day strategic plan review and discussion
15 that we held every year in July, so we had a
16 two-day Board meeting.

17 Q. Okay.

18 A. Normally our Board meetings were a

19 single day, but the July meeting was two days.

20 Q. It was the 24th and 25th of 2006, is

21 that correct?

22 A. I'd need a calendar, but that sounds

23 right. It was usually the third Monday or so of

24 the -- of the month.

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1 Q. Okay. Is it fair to say that the '06
2 strategic plan was finalized in July?

3 A. It was approved by the Board in the
4 July meeting, yes.

5 Q. Okay. So is it fair to say that, as
6 it relates to the corporate structure of Banta,
7 for the strategic plan to be modified it would
8 require Board approval?

9 A. Yes. Stephanie did not feel that
10 taking a structural change to the company, which I
11 had proposed, was something that she could do
12 unilaterally and that it would require Board
13 approval.

14 Q. Okay.

15 A. And I do know that she took it to the
16 Board prior to the Board meeting in July.

17 Q. Okay. At a meeting of the Board?

18 A. She took it -- as I understand it

19 from our conversations, she took it to the
20 Executive Committee of the Board, which was a
21 subset of the Board that she would interact with
22 on a frequent basis.
23 I know that she did that, because we
24 had finalized the restructuring plans prior to the

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1 Fourth of July weekend, and at that time she told
2 me that we were not going to go ahead with the
3 restructuring until after the Board meeting at the
4 end of July, that she wanted to discuss it with
5 the Board.

6 Q. Okay. So if I understand
7 correctly -- I'm a little bit confused now. You
8 just said that you finalized the restructuring
9 before the Fourth of July weekend?

10 A. Our internal planning was finalized.

11 Q. The senior management team?

12 A. Exactly. Internally we had done --
13 we had done all the work. We started the work in
14 January/February.

15 We had done lots of work prior to
16 that. We made our final presentation and
17 proposals to Stephanie in -- it would have been in
18 June of 2006.

19 I think, you know, I may have said

20 2004, but it would have been in June of 2006. And

21 Stephanie told me that we were not going to go

22 ahead with that plan.

23 Now, my recommendation was that we

24 put the plan into place as soon as possible.

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1 Q. And she said, "We got to -- we have
2 to go to the Board for this"?

3 A. Right, at the end of July, and
4 discuss it with the Board.

5 Q. Okay.

6 A. And I remember this because it was --
7 it was prior to the Fourth of July weekend.

8 Q. Okay.

9 A. After the Fourth of July weekend
10 Stephanie and I spoke on the phone, and we had
11 both reconsidered our positions over the Fourth of
12 July weekend, and we had coincidentally both come
13 to the conclusion that delaying it by a month or
14 more did not make sense, and she told me she was
15 going to take it to the Executive Committee and
16 that she tasked me with developing the
17 communications plan and the implementation plan,
18 so that we could announce the restructuring at the

19 July Board meeting.

20 Q. And have the Board vote on it?

21 A. We would take it to the Board, the

22 Board would approve it. I actually believed she

23 was going to have the Executive Committee approve

24 the plan prior to the July Board meeting, so that

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1 when we announced earnings coming out of the July
2 Board meeting we could announce the plan and start
3 to execute right away.

4 Q. Okay.

5 A. And I remember it because we both had
6 that conversation right after the Fourth of July
7 weekend.

8 Q. Okay. On the July 2006 Board meeting
9 what quarterly earnings were you going to take to
10 the Board?

11 A. That would have been the second
12 quarter's earnings for 2006.

13 Q. Okay. Which would have ended June
14 30th?

15 A. It would have, yes.

16 Q. Okay. And was that the -- was this
17 the quarter when you missed your numbers?

18 A. We barely missed our numbers in that

19 quarter if you go back and look at the numbers,
20 but we knew in print four of my five businesses
21 were underperforming and the fifth business unit
22 was keeping us close, kind of in the game, so
23 on an aggregate basis the numbers weren't real
24 bad, but we had bad performance of four out of

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1 five business units, and we knew that the trend
2 in the second half of the year was going to be
3 down.

4 Q. When was it that the -- so in your
5 mind do you believe that the plan was finalized
6 when Stephanie met with the Executive Committee
7 in July of 2006 on the revision of the 2004 plan?

8 A. Yes. Prior to Fourth of July's
9 weekend Stephanie told me that I did not have
10 approval to go forward and that she wanted to
11 discuss it at the meeting.

12 Q. Okay.

13 A. Subsequent to that Fourth of July
14 weekend she told me that she was going to go to
15 the Executive Committee, seek their approval, and
16 that she was giving me approval to put in place
17 communication plans and detailed implementation
18 plans, and she tasked me to develop those detailed

19 plans.

20 That would mean I would have to

21 extend and broaden the number of people who we had

22 been talking to.

23 Q. Okay. So I'm -- just so that I have

24 this correctly, Stephanie told you after the --

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1 she told you before the Fourth of July, "Don't do
2 anything 'til we go to the Board meeting," then
3 she said -- reconsidered that and said, "I'm going
4 to go to the Executive Committee, start to put
5 this plan in place," but did you understand that
6 it was not finalized 'til the Executive Committee
7 approved it?

8 A. Yes. I know that Stephanie -- I
9 don't believe that Stephanie ever said those words
10 to me.

11 My understanding of having worked
12 with Stephanie is that Stephanie would not take
13 that type of action until she had approval of the
14 Board.

15 Q. Okay.

16 A. If it was a change to a strategic
17 plan or a strategic direction Stephanie would want
18 to at least discuss it with the Board.

19 I don't know if she would have asked

20 them for approval. She may have told them she was

21 going to do it and gotten their counsel.

22 Q. Got a read?

23 A. Gotten the counsel, right.

24 Q. So did she meet with the Executive

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1 Committee?

2 A. I don't know if she met with the
3 Executive Committee.

4 Q. Okay. All right. Now, this plan
5 that ultimately went to the Board in July of '06
6 was approved, is that correct, this modification
7 of the strategic plan?

8 A. Stephanie gave me approval. Whether
9 she got approval from the Board of Directors or
10 not I don't know, and we did move forward and
11 implement the plan.

12 Q. Okay. And you received approval
13 after the Fourth of July weekend?

14 A. Yes.

15 Q. Okay. Was this plan called NBI?

16 A. Yes.

17 Q. Okay. And who named the NBI?

18 A. I did.

19 Q. Okay. And is that New Business

20 Initiative?

21 A. No.

22 Q. What does it stand for?

23 A. It took me a while to remember, and

24 what it stood for is Nothing But Initials.

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1 Q. What initials?

2 A. NBI.

3 MR. BOWEN: N, Nothing, B, But, I,
4 Initials.

5 THE WITNESS: I'll explain, if you
6 want.

7 MR. CAPONELLI: Yes, please.

8 THE WITNESS: We have -- we had
9 always used project names to keep
10 confidential anything that we were working
11 on, acquisitions, and I was involved in
12 multiple acquisition opportunities in the
13 three years I was at Banta, and I always
14 thought that the -- that the naming process
15 was kind of a cutsie little process.

16 And because I had initiated the
17 restructuring I got to name it, and I
18 called it NBI.

19 And what would happen is people
20 would do what you just did and they would
21 say what does NBI stand for, and I would
22 say Nothing But Initials.
23 MR. CAPONELLI: Nothing But Initials.
24 Okay.

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1 THE WITNESS: It was my little

2 joke --

3 MR. CAPONELLI: Okay.

4 THE WITNESS: -- with people

5 internally.

6 MR. CARPONELLI Q. Okay. So much like

7 the sound of a tree falling in the forest, does it

8 stand for Nothing But Initials or does it stand

9 for nothing?

10 Don't answer that. That's

11 rhetorical. Okay. And you worked on this plan

12 with Sara Armbruster, Stephanie Streeter.

13 Anyone else?

14 THE WITNESS A. Lots of people,

15 depending upon when we're talking about.

16 Q. Okay. Tell me who else was involved

17 in the --

18 A. Okay. The plan -- what initiated my

19 thinking about a restructure was a telephone call

20 I received, I think it was, in January -- it might

21 have been early February -- from Mark Deterding,

22 who was the president of the catalogue group, and

23 he reported to me, and Mark called me and told me

24 that he had lost some business and that he was

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1 worried about the outlook for the year and that in
2 the strategic planning process for 2006 we should
3 dust off and reconsider the restructuring plans
4 that we had talked about in previous iteration
5 cycles.

6 Q. Okay. Which had not come to
7 fruition?

8 A. Well, in '04 you could say that we
9 had a modest restructuring when we created the
10 literature management group.

11 Q. Okay.

12 A. We pulled people and equipment out
13 of the book group and we formed a new business
14 unit.

15 Q. Let me ask you a question. The '04
16 strategic plan, did that increase the expenses
17 from the 12/31/03 year or did it decrease
18 expenses, the '04 strategic plan, the original

19 one?

20 A. I don't understand the question. Are
21 you saying did we spend money on the creation of
22 the plan?

23 Q. No, whether or not the adding of the
24 literature, was that an additional expense on your

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1 income statement?

2 A. Yes, creating the literature

3 management group would have been an added expense,

4 because we would have added resources to an

5 independent group.

6 We would have created a separate, you

7 know, financial function, for example. However,

8 there were other parts of the '04 plan that had

9 more than offsetting expense reductions.

10 Q. Okay. So if I understand correctly,

11 the '04 plan, which created the literature

12 management group, that was something that was

13 done to increase profits based upon good profits

14 and --

15 A. The literature management --

16 MR. BOWEN: Let him finish his

17 question.

18 MR. CARPONELLI Q. And the expectation

19 of further profits going forward?

20 THE WITNESS A. Yes.

21 Q. Okay. Now, my question is, with

22 regard to the '06 modification, is this something

23 that was implemented in an effort to reduce

24 expenses?

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1 A. The '06 restructuring had three basic
2 points of logic that supported it, from my
3 perspective.

4 One, I thought we could reduce
5 expenses by consolidating business units and,
6 candidly, eliminating my position.

7 Secondly, we could improve our
8 performance and accelerate our performance
9 relative to some of the strategic initiatives that
10 we had put in place in 2004.

11 It's easier to execute in two
12 business units with two leadership groups rather
13 than five.

14 Q. Let me stop you right there. I don't
15 mean to interrupt, but you said strategic
16 initiatives?

17 A. Yes.

18 Q. What do you mean by that?

- 19 A. Implementation of lean manufacturing
- 20 techniques, consolidating our procurement
- 21 practices so that we could buy common commodities
- 22 at a cheaper cost by leveraging our scale,
- 23 implementing and centralizing some of our IT
- 24 processes, those types of things.

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1 Q. Any change in control considered in

2 this --

3 A. No.

4 Q. -- strategic initiatives?

5 A. No.

6 Q. Okay. Finish your answer.

7 A. So I think there were three. So the
8 third was improving our go-to-market and top line
9 revenue for the direct marketing and literature
10 management groups.

11 So it was reducing costs by
12 restructuring the organization, improving
13 execution of several strategic initiatives that we
14 had launched in '04, and improving our
15 go-to-market or the way we sold and represented
16 ourselves to the direct marketing and literature
17 management group customers, which in many cases
18 were common customers.

19 Q. Okay. Were you aware in June of '06
20 of a consolidation in the print industry that was
21 occurring?

22 A. No.

23 Q. You had -- you were aware that
24 Wallace Moore and Donnelley had merged?

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1 A. Yes, but that merger was in 2004.

2 You asked me about 2006.

3 Q. Well, just generally during that time
4 period.

5 A. In my 25 years of experience in the
6 printing industry companies merged periodically.
7 I wouldn't say that 2006 was -- actually, I would
8 say that 2006 represented a slower period of
9 consolidation than what we had seen in the 1990s
10 and early 2000s.

11 Q. If you -- if you do not isolate 2006
12 and talk about the period, let's say, from when
13 you worked at Banta, from 2004 until January of
14 '07, would you say that there had been a
15 consolidation of interests in the print sector?

16 A. No more so than I had seen in prior
17 years.

18 Q. Okay. Do you think Goldman Sachs

19 would agree with you?

20 A. I don't know. I don't think I know

21 anybody at Goldman Sachs.

22 MR. CARPONELLI: Okay. Did you --

23 let me show you what I have marked as --

24 what I'm going to have marked as our first

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1 exhibit.

2 (Whereupon said document was

3 marked as Deposition Exhibit

4 No. 15 as of 1/89/09.)

5 MR. CARPONELLI Q. Now, Mr. Allen,

6 you were employed at Banta during July of 2004?

7 THE WITNESS A. Yes, I was employed in

8 July of 2004 --

9 Q. Okay.

10 A. -- by Banta.

11 Q. Have you ever seen this document

12 before or anything similar to it, a final revised

13 or a prior draft?

14 A. No, I don't believe I've ever seen

15 this document.

16 Q. Okay. Did you make reports to the

17 Board of Directors in '04?

18 A. Yes. I was -- I attended every Board

19 meeting, I believe, every Board meeting all three

20 years.

21 Q. Okay. Do you remember Goldman Sachs

22 being engaged by Banta Corporation in 2004 to make

23 a presentation to the Board of Directors?

24 A. No. It could have happened in

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1 executive session. A typical Board meeting was
2 management presentations by myself and other
3 leaders inside of Banta.

4 We would request any capital
5 appropriations, things of that nature. Then the
6 senior executives other than, I think, Ron and
7 Stephanie would be excused and the Board meeting
8 would continue.

9 Q. Okay. So you're -- as you sit here
10 you're unaware that Goldman Sachs was retained as
11 Banta's anti-raid adviser in 2004?

12 A. I did not know Goldman Sachs. I
13 don't recall Goldman Sachs working for Banta.

14 Q. Okay. Can you look at Page 1?

15 A. Discussion Topics and Objectives?

16 Q. Yes. Do you see that as part of
17 their engagement, quote, "We have reviewed Banta's
18 strategic alternatives on an ongoing basis"?

19 A. Yes, the second bullet.

20 Q. Okay. Do they use the phrase

21 strategic alternatives in the same way that you

22 use strategic initiatives, if you know?

23 MR. BOWEN: Objection, lack of

24 foundation.

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1 MR. CARPONELLI: If you know.

2 THE WITNESS: I don't know.

3 MR. CARPONELLI Q. Okay. It says here
4 in this document in point three sale and merger of
5 the company.

6 Had you ever heard of the concept in
7 2004 that Banta would be interested in the sale or
8 the merger of its company?

9 THE WITNESS A. No.

10 Q. Okay. You'll agree with me that this
11 document reflects that?

12 A. Well, I haven't read the entire
13 document, so I --

14 Q. Why don't you just look at that
15 section and see if it says that.

16 MR. BOWEN: I will object while he
17 looks at the document that the document
18 speaks for itself.

19 It says whatever it says. The
20 witness hasn't seen the document, and his
21 characterization of it is irrelevant.
22 THE WITNESS: Having just scanned
23 it, it would appear to me that this is
24 a general sales pitch by Goldman Sachs.

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1 MR. CARPONELLI Q. Would you look at
2 Page 4?

3 THE WITNESS A. I'm on Page 4.

4 Q. The last square?

5 A. The last, yes.

6 Q. Would you agree or disagree with the
7 statement by Goldman Sachs that, quote,
8 "Consolidation continues to be anticipated to
9 counter the overcapacity, pricing pressure, and
10 capital expenditure requirements," end of phrase,
11 close quotes, dot dot dot?

12 Would you disagree with that?

13 MR. BOWEN: Would he disagree that
14 Goldman Sachs anticipated that?

15 MR. CARPONELLI: No, with that
16 statement. Is that a true statement?

17 MR. BOWEN: Was that his anticipation
18 in July of '04?

19 MR. CARPONELLI: I'm asking him if he

20 agrees with that statement which Goldman

21 made in this document.

22 MR. CARPONELLI Q. Do you agree with

23 it or disagree with it?

24 THE WITNESS A. I did not -- I would

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1 not have agreed with that in 2004.

2 Q. Okay. Would you agree with that in
3 2006?

4 A. In 2006, I would not have agreed with
5 it in 2006.

6 Q. Okay. Now, correct me if I'm wrong.
7 Goldman sets out here several notable recent deals
8 within the printing sector that Goldman Sachs
9 advised on.

10 Are you aware that Deluxe/NEBS did a
11 deal, or were you aware at the time?

12 A. I was not. They weren't really in
13 our competitive space. They were printers, but
14 they did business forms.

15 Q. Did you know R.R. Donnelley and Moore
16 Wallace did a deal?

17 A. I did.

18 Q. Did you know that Fed Ex and Kinko's

19 did a deal?

20 A. I did, but they are also not somebody

21 I would consider in our competitive space.

22 Q. Okay. Did Stephanie Streeter ever

23 discuss this agreement with you? This document,

24 I'm sorry, or Goldman Sachs' engagement?

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1 A. I don't remember Goldman Sachs ever
2 being engaged, and I don't remember ever
3 discussing this with Stephanie.

4 Q. Okay. Are you aware that Goldman
5 Sachs acted in the ultimate plan of merger and
6 sale to R.R. Donnelley of Banta?

7 A. No, I didn't -- I don't recall that.
8 It's possible that I have read it in like the
9 merger agreement, but I haven't read the merger
10 agreement in two years.

11 Q. Okay. Let me show you -- now, I
12 didn't have this made, but I have it highlighted,
13 so let the record reflect that I'm reading from
14 the Banta Corporation special meeting of
15 shareholders notice dated December 4, 2006 and the
16 notice of special meeting of shareholders to be
17 held on January 9, 2007, okay, and I'm just going
18 to show this to your counsel and to you.

19 The subheading there called The

20 Merger, were you involved in drafting that?

21 A. No.

22 Q. Do you know who was?

23 A. I can speculate, but I don't know.

24 Q. Don't speculate, but if you can --

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1 what I don't want is conjecture, speculation, or
2 guess, but if you have a reasonable belief without
3 an absolute certainty who would have been involved
4 in that I would ask you to answer.

5 MR. BOWEN: So he's saying not
6 guesswork, but if you've got some basis for
7 it.

8 THE WITNESS: A reasonable -- a
9 reasonable -- I don't -- I'm trying to
10 think of it.

11 You said guess, and I'm not --
12 trying not to use the word, but a
13 reasonable judgment would be that Ron
14 Kneezel, our general counsel, and Foley &
15 Lardner, who had been our counsel, would
16 have been the ones to draft that document.

17 MR. CARPONELLI Q. What about
18 Stephanie? Would she have been involved in it?

19 THE WITNESS A. Stephanie would have
20 been involved in it, and I believe that there may
21 have been -- I would -- I would assume that a
22 committee of the Board would have also reviewed
23 it.

24 MR. CARPONELLI: Okay. So now back

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1 to Goldman Sachs. I want to ask you a
2 question, and I'm going to go to a
3 different highlight here. This is in the
4 merger section, which is a discussion
5 portion.

6 I'll show you right there in
7 this paragraph that begins with, "On
8 October 13, 2006 Miss Streeter," and refer
9 to there, and refer to on the bottom of the
10 page, if you want to read that.

11 (Pause.)

12 MR. CARPONELLI Q. Did you see there
13 that Goldman is involved in the -- in consulting
14 on the merger plan?

15 MR. BOWEN: Can you specify
16 consulting with whom? Because I think
17 this --

18 MR. CARPONELLI: Well, we need to

19 find that out, because it's not clear.

20 THE WITNESS: What is -- what I read

21 from this document is that UBS and Goldman

22 Sachs participated in a meeting between

23 senior Banta executives and senior

24 Donnelley executives.

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1 MR. CARPONELLI Q. Okay. And who did
2 Goldman represent, if you know?

3 THE WITNESS A. I don't know.

4 Q. Okay. And did you read both sections
5 where it -- where it talked about Goldman?

6 A. I skimmed it.

7 Q. The one down on the bottom?

8 A. I skimmed it pretty quickly.

9 Q. Okay. So you -- so you don't know --
10 you don't know in what capacity Goldman
11 participated in that meeting?

12 A. I do not know.

13 Q. Okay. And you were unaware of this
14 document dated July 27th of 2004 --

15 A. That's correct.

16 Q. -- marked as Exhibit 15?

17 A. And it's really unclear to me,
18 because in that document that you -- this document

19 that you showed me it said that Goldman
20 represented Donnelley, so it could be that
21 Donnelley brought Goldman to this meeting.
22 I don't know.
23 Q. Okay. Where does it say it
24 represents -- it says here presentation to Banta

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1 Corp. Board of Directors.

2 A. You directed me to Page 4.

3 Q. Yes.

4 A. And you said several notable recent
5 deals with print sector that Goldman Sachs
6 advised, and you pointed out R.R. Donnelley and
7 Moore Wallace.

8 Q. They had done those deals.

9 A. Right. So they obviously had
10 represented R.R. Donnelley and Moore Wallace, and
11 Mr. Engelson was at R.R. Donnelley after that
12 deal.

13 Q. So is it your -- I also directed your
14 attention to Page 1. And I don't mean to argue
15 with you.

16 It says Goldman Sachs has been
17 retained as Banta's anti-raid adviser.

18 A. I hadn't -- I didn't read that first

19 bullet.

20 Q. Okay.

21 A. You pointed me to the second one.

22 MR. BOWEN: Can we go off the record

23 just one minute?

24 MR. CARPONELLI: Sure.

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1 (Whereupon a discussion

2 ensued off the record.)

3 MR. CARPONELLI Q. Back on the record.

4 In this same document, the very initial -- I'm

5 talking now about the December 4, 2006 important

6 special meeting of shareholders.

7 It says here by Stephanie Streeter

8 that our Board of Directors unanimously determined

9 that the merger is fair to and in the best

10 interests of our company, shareholders, and other

11 constituencies.

12 Okay. You want to take a look at

13 that language? It's highlighted.

14 THE WITNESS A. Okay.

15 Q. "And other constituencies" is a

16 phrase, I will represent to you, is utilized on

17 several occasions as it relates to the

18 considerations on the ultimate plan of merger that

19 happened between Banta and R.R. Donnelley.

20 And my question to you is when the

21 phrase "other constituencies" is used, does it

22 include employees?

23 MR. BOWEN: Objection, lack of

24 foundation.

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1 MR. CARPONELLI: If you know.

2 THE WITNESS: I don't know. I can
3 speculate again, but I don't know.

4 MR. CARPONELLI Q. You don't know.

5 Okay. Now, were you aware in July of 2006 that
6 Jim Cyze was party to a key executive employment
7 and severance agreement?

8 THE WITNESS A. Yes. I refer to it as
9 a change of control agreement.

10 Q. Okay. Or KEESA agreement?

11 A. Yes.

12 Q. Okay. And you were party to that as
13 well?

14 A. Yes.

15 Q. And there were seven or eight key
16 executives that were party to that, agreements
17 similar to that?

18 A. I don't know what the number was, but

19 it was -- I would hazard a guess that it was

20 between five and twenty.

21 Q. Okay. Were you involved in the

22 drafting of that agreement at all?

23 A. No.

24 Q. Okay. Did you have a clear

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1 understanding of how it operated?

2 A. At what time?

3 Q. At any time; when you signed it, when
4 it went into effect, or at any time during the
5 interim.

6 A. I read it. I read it when I signed
7 it in January of 2004 when I joined the company,
8 and I read it again in August of 2006.

9 I went home and I read the document.

10 Q. And did you understand it?

11 A. I think I understood it in August of
12 2006.

13 Q. Okay.

14 A. Actually, it turns out that I didn't
15 fully understand it. I had to have some things
16 explained to me.

17 Q. Okay. Then that was after the fact?

18 A. Yes.

19 Q. Have you ever done any analysis of
20 the agreement as it relates to Mr. Cyze, whether
21 or not Mr. Cyze is entitled to his KEESA benefits?

22 A. No, I never did that analysis.

23 MR. CARPONELLI: Okay. In your
24 review of your agreement, which I will

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1 assume is similar to -- let's show it to
2 you and we'll see if it is.

3 Let's mark this. This has
4 previously been marked at Cyze, so you
5 don't have to mark it, Madam Court
6 Reporter.

7 It's No. 2. And, counsel, I
8 have one for you.

9 MR. BOWEN: Thank you.

10 MR. CARPONELLI: And I'll ask you
11 to review that and tell me if your
12 agreement is the same or similar, if you
13 know.

14 THE WITNESS: This could take a while
15 then.

16 MR. BOWEN: Take all the time you
17 want to review it and answer the question,
18 if you can.

19 THE WITNESS: I haven't read the

20 entire thing. I've kind of scanned the

21 paragraphs.

22 It appears that this is the

23 same agreement --

24 MR. CARPONELLI: Okay.

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1 THE WITNESS: -- that I had.

2 MR. CARPONELLI: Okay.

3 THE WITNESS: I'd have to do a --

4 MR. CARPONELLI: Okay.

5 THE WITNESS: I would suspect that it

6 is the same agreement.

7 MR. CARPONELLI Q. Okay. I'm going to

8 call your attention on that document to -- it's

9 A-3.

10 It's five pages from the back.

11 THE WITNESS A. Five pages from the

12 back?

13 Q. Yes. It's an exhibit attached to it.

14 A. A-3.

15 Q. A-3, exactly.

16 A. All of it?

17 Q. Just Paragraph H.

18 A. I've read it.

19 Q. Do you understand how that effective

20 date operates?

21 A. I think so.

22 Q. Okay. Here's my question to you

23 as it relates to Jim Cyze. Were you -- strike

24 that.

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1 Were you involved in the decision
2 regarding whether Jim Cyze would participate in
3 the KEESA agreement?

4 A. No. I believe Jim Cyze had this
5 agreement in place prior to my joining the
6 company.

7 Q. Let me -- let me rephrase the
8 question. I was not clear. Thank you for that
9 clarification.

10 As it relates to this exhibit before
11 you, Cyze was terminated in July of '06, is that
12 correct?

13 A. I talked -- I spoke to Jim Cyze and
14 told him that his position was being terminated on
15 July 20th.

16 The effective date was, I believe,
17 the end of August at the -- at the time of the
18 initial discussion.

19 Q. Right.

20 A. And I don't know when the actual

21 termination date was, because there were some --

22 Q. We'll go through that. I have

23 three --

24 A. There were some other -- there were

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1 some other things.

2 Q. There were some other issues which
3 I'm going to ask you about. But were you involved
4 in the decision as to whether or not his
5 termination would entitle him to benefits under
6 his KEESA agreement?

7 You received benefits under your
8 KEESA agreement?

9 A. I did.

10 Q. Okay. So the question is were you
11 involved in the decision as it related to whether
12 or not Jim Cyze would receive his KEESA benefits?

13 A. I don't recall any conversations in
14 which a decision like that occurred. I know we
15 would -- there was no discussion about the KEESA
16 change of control agreement at all prior to August
17 10th or 11th of 2006.

18 Q. Okay. I'm going to ask you a

19 question now. You weren't involved in the
20 decision whether he got his benefits or not, but
21 I'm going to direct your attention to that section
22 of Effective Date, H on A-3, and it's double I,
23 going down to the fourth line.
24 A. Yes, I see it.

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1 Q. It says "or otherwise arose in
2 connection with or in anticipation of a change in
3 control of the company."

4 Do you understand what "otherwise
5 arose in connection with" refers to?

6 A. I'm not a lawyer, so my laymen's
7 reading of this would tell me that if Jim was
8 terminated as a result of a change of control or
9 in anticipation of a change of control then the
10 agreement would be effective.

11 Q. Okay. Let me ask you a question.
12 What does "otherwise arose in connection with"
13 mean to you?

14 A. That somebody had approached us about
15 a change of control, either hostile or friendly,
16 and that as a result of those discussions, in
17 connection with those discussions, we chose to
18 terminate Jim.

19 Q. Okay. So you're reading in there --
20 where in the phrase it says "otherwise arose in
21 connection with," you're reading into that that
22 there's a resulting antecedent to a change in
23 control.
24 Could you read that language just as

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1 otherwise arising in connection with what
2 ultimately becomes a change in control?

3 A. I don't understand your question.

4 MR. BOWEN: Objection. I don't
5 think -- I didn't understand it.

6 MR. CARPONELLI Q. Okay. The phrase
7 "otherwise arose in connection with" does not
8 have to be as a result of, would you agree with
9 me?

10 MR. BOWEN: Object. That's calling
11 for a legal conclusion.

12 THE WITNESS: Again, I'm not sure I
13 understand your question.

14 MR. CARPONELLI: Just English, just
15 English.

16 THE WITNESS: To me -- to me it says
17 that if there were -- if there was ongoing
18 discussions regarding a change of control

19 and in connection with those discussions

20 Jim was terminated.

21 That's how I read that, and

22 maybe you're trying to get me to read it

23 differently.

24 I don't. I don't understand

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1 that.

2 MR. CARPONELLI Q. Well, what I'm
3 asking you is the phrase "otherwise arose in
4 connection with," and I don't read that to mean as
5 a result of.

6 I think otherwise arose in connection
7 with is -- doesn't require a proximate causation.
8 That's my personal reading of it, and I'm
9 wondering if you agree with that interpretation.

10 And I'm assuming you don't.

11 MR. BOWEN: Objection, asked and
12 answered.

13 THE WITNESS: I don't.

14 MR. CARPONELLI Q. Okay. As part of
15 your responsibilities from '04 through January of
16 '07 did you do performance evaluations of Jim
17 Cyze?

18 THE WITNESS A. Yes.

19 Q. Okay. And do you remember what they

20 were in '04, '05, and '06?

21 A. Not specifically and not for each of

22 the years.

23 Q. How about generally?

24 A. Generally I viewed Jim's performance

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1 as being good. Jim's business unit performed, I
2 would say, very well in 2005.

3 I don't remember how the business
4 unit performed in 2004. I thought Jim was very
5 good at the point of execution, at disciplined
6 follow-up, follow-through.

7 However, I also thought that Jim on
8 an improvement side of things was not as strategic
9 as I thought somebody in his position could be,
10 and I didn't think Jim was as good with customers
11 as he could be.

12 That wasn't Jim's forte. He didn't
13 necessarily -- he wasn't a strategy and a
14 customer-oriented guy.

15 I'm not saying he was not interested
16 in customers, but that wasn't where his strengths
17 were.

18 His strength was really in, I would

19 say, driving execution.

20 Q. When you say he was not as strategic,

21 what do you mean by that?

22 A. He wasn't as comprehensive a thinker,

23 didn't think through how to create new value for

24 customers or even how to think -- how to create

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1 new value for our owners, more of a -- it's more
2 of a broader conceptual thinker is what I mean by
3 that.

4 Q. Did his unit outperform all other
5 units in '05?

6 A. What metric?

7 Q. The five unit profits.

8 A. Absolute profits? No.

9 Q. What's an absolute profit versus a --
10 just a profit?

11 A. Well, are you -- are you talking
12 about year-over-year change in profit? He
13 improved significantly year over year, but the
14 direct marketing group was at the very least the
15 third least profitable of the five.

16 Q. Okay. But in terms of growth and
17 profitability for his unit he had the lowest
18 overhead, didn't he, for his unit, business unit?

19 A. I don't recall that. That wouldn't

20 be my impression, but I don't recall that.

21 Q. Okay. So what you're saying is he

22 was -- his group was not the No. 1 performer?

23 A. His group performed -- it depends on

24 the metric you want to use.

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1 Q. Okay. What metric would you agree
2 with me that his group was the No. 1 performer?

3 A. I don't recall any one metric. What
4 I would say, I will tell you -- let me give you
5 kind of a characterization of how I saw his
6 group's performance.

7 When I came into the company they
8 had, as I recollect, suffered through several
9 years of very poor earnings slide, I mean,
10 earnings erosion.

11 They were making a couple of million
12 dollars.

13 Q. Profit?

14 A. Profit. We had other businesses
15 making 20 or 30 million dollars, so they were --
16 that was in 2004.

17 Jim's year-over-year improvement in
18 that profit was good. I believe in 2006 he was in

19 the twelve million dollar range of profit.

20 So he went from, you know, let's say

21 three million to twelve million, but again there

22 were other business units that made more money

23 than the direct marketing group.

24 That 12 million was still

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1 substantially lower than some of the others, and
2 there were other groups that during the three
3 years that I was there had a very good rate of
4 change improvement, and that's why I can't say
5 that Jim's -- I can't even say that Jim's rate of
6 change was the highest of the five.

7 Q. Okay. So, however, would you agree
8 with me that in the NBI that eliminated his
9 position his performance numbers for his group
10 during the period of time that you were there was
11 not the reason for eliminating him?

12 A. That's right. I did not eliminate
13 Jim for financial performance reasons.

14 Q. Okay. What about Jim's salary as it
15 related to the business group and bonus and
16 compensation?

17 A. By that do you mean all of the other
18 presidents?

19 Q. All the other group presidents.

20 A. Okay. Jim was, I believe, in the --

21 he was either the top or the second-highest-paid

22 business unit president that reported to me.

23 Q. Okay. Was that a factor in your

24 determination to consolidate him in the strategic

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1 plan of '06 out of the company?

2 A. No.

3 Q. That was not?

4 A. No.

5 Q. Did you realize that by eliminating

6 him the net income would be improved?

7 A. Absolutely I realized that, but

8 your -- I thought your question was was his income

9 relative to the other business unit presidents a

10 consideration, and my answer to that is no.

11 Did I know that eliminating a

12 president was going to improve bottom line

13 operating earnings?

14 The answer is yes.

15 Q. Okay. And is that one of the reasons

16 why you eliminated him?

17 A. I think I said earlier that the

18 purpose of structuring was to --

19 Q. Keep going.

20 A. Okay. The purpose -- the purpose of

21 the restructuring was to reduce costs by

22 consolidating multiple business unit functions and

23 going from five units down to two, to improve our

24 strategic implementation of key strategies that

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1 came out of the 2004 strat plan, and to improve
2 the way we went to market in the direct marketing
3 literature management group.

4 So yes, eliminating a -- you know, we
5 were -- we were eliminating -- in the first phase
6 of the project we eliminated between ten and
7 fifteen people, and that was part of --

8 Q. When was the first phase?

9 A. July, the July announcement. There
10 was really about three phases to the overall
11 project.

12 Q. Okay. What were they?

13 A. The first phase was the announcement
14 of consolidating five business units into two.

15 Q. When?

16 A. And that was in July. And then
17 immediately following that would be the second
18 phase, where the -- where the new leaders of these

19 combined organizations would then have to design

20 the organizations below them.

21 I wasn't going to tell them how many

22 accountants they needed in these combined

23 entities.

24 So that was the second phase. And as

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1 I remember, we were targeting 15 to 20 million
2 dollars worth of cost reduction.

3 And then the third phase of the
4 restructuring, which would also occur between July
5 and the end of the year, would be planning for the
6 consolidation of subscale printing plants.

7 Q. Okay. Now --

8 A. In total we were targeting 25 to 30
9 million dollars worth of operating earnings
10 improvement.

11 Q. Now, was this restructuring triggered
12 at all by the first quarter earnings?

13 MR. BOWEN: The first quarter?

14 MR. CARPONELLI: First quarter.

15 MR. BOWEN: Okay.

16 THE WITNESS: The restructuring was
17 triggered by the strategic plan review that
18 we did. It started in January and

19 February.

20 And Mark Deterding called me,
21 suggesting that I consolidated his business
22 unit with the publication group or with the
23 direct marketing group, so that we could
24 reduce cost.

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1 MR. CARPONELLI Q. So that the
2 missing -- what about the second quarter earnings?

3 THE WITNESS A. Second quarter
4 earnings, we knew -- second quarter earnings, as I
5 recollect, were not real bad. They were bad.

6 They were not on plan, but we knew
7 going into the second quarter that we saw softness
8 in multiple business units and that the second
9 half of the year was going to be challenging, so
10 the restructuring was partially motivated to get
11 ahead of that strategic change.

12 We saw things happening in our
13 business that was causing us to have deep concern
14 about our performance in that year, and so as part
15 of the strategic review we decided to move forward
16 with the strategic restructuring.

17 Q. Okay. Are you aware that on July
18 25th of 2006 Banta issued a press release

19 reflecting second quarter results of operations

20 and revised the 2006 earnings guidance downward?

21 A. Yes. It was the guidance that, as I

22 recollect -- as I recall, the earnings through Q1

23 and Q2 were not far off of our budget, but we knew

24 that the second half of the year was not looking

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1 good.

2 Q. Okay. Were you aware that following
3 your earnings announcement in July that the stock
4 traded down over 22 percent?

5 Were you aware of that?

6 A. Yes.

7 Q. Okay. So that there was -- there was
8 a detrimental effect on the value of the stock as
9 a consequence of the downward revision on guidance
10 as it related to earnings in the first quarter and
11 the second quarter, is that correct?

12 MR. BOWEN: Objection. Perhaps I
13 didn't understand the question.

14 MR. CARPONELLI: I'll rephrase it.

15 MR. BOWEN: Well, let me explain.

16 Unless you have a problem with it, let me
17 explain my confusion.

18 Guidance, as I understand it,

19 is forward looking.

20 MR. CARPONELLI: Right.

21 MR. BOWEN: By the end of July 2006

22 the earnings in the first and second

23 quarters were historical facts --

24 MR. CARPONELLI: Correct.

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1 MR. BOWEN: -- being what they were.

2 MR. CARPONELLI: Okay. Let me make
3 it clear. I think that's a good point.

4 Okay.

5 MR. CARPONELLI Q. When I'm talking
6 about the revision of guidance downward I'm
7 talking about the balance of the year, just like
8 you were talking about the balance of the year, is
9 that correct?

10 THE WITNESS A. You'll have to
11 rephrase your original question.

12 Q. Well, correct me if I'm wrong. In
13 July of '06 --

14 A. Yes.

15 Q. -- there was a revision of the -- for
16 the third quarter and the fourth quarter of
17 guidance downward?

18 A. From what you -- yes, I believe so.

19 Q. Okay.

20 A. And I believe that's what you just

21 read.

22 Q. Okay. And correct me if I'm wrong.

23 The first quarter and the second quarter

24 historical numbers were off of original guidance

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1 and were down, and so that you needed more
2 urgently to implement the NBI for cost savings
3 purposes, is that correct?

4 A. I don't know as I sit here. I would
5 have to review the financial earnings report. As
6 I remember it, our first quarter results were on
7 or very close to plan, our second quarter results
8 were also very close to plan, but that in my
9 business unit, the print -- the print group, we
10 had four -- three or four of the five business
11 units that were down, and the literature
12 management group, which Dan Thornton led, was up
13 significantly, and so if you -- if you peeled
14 apart the aggregate -- the aggregate number, I
15 think, was relatively close to our plan, but if
16 you peeled it apart you saw --

17 Q. A downward trend?

18 A. -- a downward trend.

19 Q. Okay. And so that made the NBI

20 restructuring more urgent, is that fair?

21 A. Yes, yes.

22 Q. Okay. Now, my question to you is are

23 you aware whether or not by having the first and

24 second quarter, which was reflective of a change

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1 in your guidance for the balance of the year,
2 whether that made you more likely to be a
3 candidate for a hostile takeover or a change in
4 control?

5 A. I don't remember thinking about it or
6 being concerned about it prior to August 10th or
7 11th.

8 Q. Okay. Was that not your
9 responsibility as the print sector president? Was
10 that Stephanie Streeter's?

11 A. My responsibility would be to serve
12 customers and make as much money as humanly
13 possible for our owners.

14 Q. Okay. And it was not to be concerned
15 about whether or not strategically the company
16 would remain independently owned as opposed to a
17 party to a plan of merger or a hostile takeover?

18 A. They were -- that was not part of my

19 job description. It would have been, I presume,

20 clearly Stephanie's as chairman of the Board and

21 the Board of Directors' responsibility --

22 Q. Okay.

23 A. -- to think about the ownership

24 structure of the company.

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1 Q. And in your -- in your belief do you
2 believe that's also one of the reasons why you
3 were not party to the Goldman Sachs presentation
4 to Banta Corporation, because that wasn't part of
5 your responsibility?

6 A. That would be my belief. There were
7 many discussions after August 10th or 11th that
8 occurred, I'm sure, about the ownership structure
9 and the strategic direction of our company, and I
10 was not privy to any of them.

11 Q. Okay. Would you agree with me that
12 the basic cornerstones for the 2004 strategic
13 plan, which was modified in 2006, would you agree
14 with me that they are; one, to improve the base
15 business to sustain competitiveness and growth?

16 A. Yes.

17 Q. Two, position the company to pursue
18 key market segments?

19 A. Yes.

20 Q. Three, effect acquisitions to enhance

21 competitive advantage?

22 A. Yes.

23 Q. And four, take steps to ensure that

24 we have the talent needed to operate our business

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1 successfully?

2 A. Yes.

3 Q. Okay. You were involved in

4 acquisitions, is that right?

5 A. Yes.

6 Q. Did you work on the Cadmus potential

7 transaction?

8 A. Yes.

9 Q. That never came to fruition?

10 A. It did not.

11 Q. What was the reason for that?

12 A. As I recall, we made an offering, a

13 price offering, to Cadmus, and then Cadmus decided

14 that they were going to run an auction, and so

15 they didn't accept our offer and they ultimately

16 ran an auction.

17 Q. Okay. And they were ultimately sold?

18 A. They were ultimately sold.

19 Q. But you didn't -- you were not the

20 buyer?

21 A. No, we were not buyers.

22 Q. Was Cadmus a publicly-traded company?

23 A. Yes.

24 Q. Did you work with Foley on that or

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1 did you do that with --

2 A. I don't know, but I believe so.

3 Q. Okay.

4 A. I don't remember working with another
5 law firm.

6 Q. I'm referring now to the merger
7 discussion in the document that's not been marked
8 as an exhibit, which the cover page is dated
9 December 4th to the shareholders by Stephanie
10 Streeter, and in this document it says -- and it's
11 referring now to the ultimate transaction of Banta
12 to Donnelley.

13 A. Okay.

14 Q. And it says "Our reasons for the
15 merger recommendations of our Board of Directors,"
16 and it says, "On October 31st on your Board of
17 Directors unanimously adopted resolutions," bullet
18 point one, "determining that the merger agreement

19 is fair to and in the best interests of Banta, our

20 shareholders, and other constituencies."

21 Do you know what that phrase "other

22 constituencies" refers to?

23 MR. BOWEN: Objection, asked and

24 answered. We went over this about ten

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1 minutes ago.

2 MR. CARPONELLI: This is different
3 language.

4 MR. BOWEN: Okay. Fine.

5 MR. CARPONELLI: It's the same
6 phrase, but it's found in a different
7 location.

8 MR. BOWEN: Okay.

9 THE WITNESS: I don't know.

10 MR. CARPONELLI Q. Okay. On Page 15
11 it goes on to say that "Our Board of Directors
12 believes that the merger agreement is fair to our
13 shareholders and other constituencies." I won't
14 ask you about that, I promise.

15 "In reaching these conclusions our
16 Board of Directors consulted with our senior
17 management and our legal and financial advisers
18 and considered the short-term and long-term

19 interests and prospects of Banta and our

20 shareholders and other constituencies.

21 "In reaching the foregoing

22 determination the Board of Directors considered

23 the following material factors that it believed

24 supported its determinations."

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1 And this is the determination to do
2 the plan of merger with R.R. Donnelley. And I'm
3 going to ask if you agree that this is accurate.

4 Our current and historical financial
5 condition?

6 MR. CARPONELLI: I'm sorry?

7 MR. BOWEN Q. Do you agree that that
8 was a consideration?

9 MR. BOWEN: Object.

10 MR. CARPONELLI: As a member of the
11 senior management?

12 MR. BOWEN: Objection, lack of
13 foundation.

14 MR. CARPONELLI: Okay. Are you --

15 MR. BOWEN: I'm not -- I mean, I'm
16 not telling him not to answer.

17 MR. CARPONELLI: No, I understand.

18 But I want to get it clear, because you

19 know what, Mike?

20 You don't make objections

21 unless they're legitimate. I have a great

22 deal of respect for you as a lawyer.

23 So what I want to do is get a

24 good question on the record. And unlike a

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1 lot of lawyers, I don't take offense to
2 your objections.

3 I think that they're probably
4 offered in a sense of professionalism,
5 trying to get a good record, so I'm going
6 to rephrase.

7 MR. CARPONELLI Q. Would you agree
8 with me that you were a part of the senior
9 management team?

10 THE WITNESS A. Yes, I was part of the
11 senior management team. However, I never
12 participated in meetings with our Board of
13 Directors when they looked at the -- discussed the
14 reasons or the validity behind any merger.

15 Q. Okay. That would have been Kneezel,
16 Stephanie? Do you know anybody else?

17 A. I don't know. I can speculate that
18 it would have been Ron Kneezel, Geoff Hibner,

19 Stephanie Streeter would have been the three key

20 players.

21 Q. Okay. Did you read this document

22 that went to the shareholders? You were a

23 shareholder.

24 You received it obviously.

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1 A. I'm sure I have read most of that
2 document.

3 Q. Okay. And you find it to be
4 accurate, is that correct?

5 A. I don't -- I don't recall. I
6 wouldn't have known. When I read that document,
7 if that's the document that I think it is, it's
8 where I began to learn what occurred prior --
9 from, you know, August through October 31st, which
10 is the day that I received a telephone call from
11 Stephanie Streeter telling me that my former
12 employer was buying my current employer.

13 Q. August 31st?

14 A. Excuse me. October 31st.

15 Q. October 31st?

16 A. It was Halloween.

17 Q. And do I take it that you were not
18 involved with Mr. Burton of Cenveo?

19 A. Never have met the man.

20 Q. Or Scott Eulin, his investment

21 banker?

22 A. Never met him, never spoken to him.

23 Q. Okay. But generally correct me if

24 I'm wrong. This document which went to the

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1 shareholders, which you received and read, you
2 have no quarrel with anything that's in here?

3 A. It's been -- it's been a couple of
4 years since I've read that document. I don't
5 recall seeing anything that looked wrong or false.

6 Q. Okay. Do you have a belief as to
7 whether or not the downward revision -- I may have
8 asked this, and I'll withdraw it if I did.

9 Do you have a belief as to whether or
10 not the NBI restructuring, which saved costs,
11 militated against or was in anticipation of a
12 hostile takeover?

13 A. It was not in anticipation of a
14 takeover or a change of control.

15 Q. Do you believe that the reduction in
16 overhead expenses would have had the effect of
17 diminishing the likelihood of a hostile takeover?

18 A. I'm not a stock expert. It would be

19 my position that implementing a restructuring that
20 is going to improve earnings would increase the
21 value of the company and that if the value of the
22 company is increasing that would be counter to
23 somebody wanting to buy the company.

24 MR. CARPONELLI: Okay. Let's mark

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1 this next.

2 (Whereupon said document was

3 marked Deposition Exhibit No.

4 16 as of 1/8/09.)

5 MR. CARPONELLI Q. Showing you what

6 has been marked as your Deposition Exhibit No. 16,

7 do you recognize this document?

8 THE WITNESS A. I don't. I don't

9 remember ever seeing this document. I understand

10 what it is, I think.

11 Q. Okay. It bears a date of 4/18/06.

12 Is that your handwriting?

13 A. I don't think that's my handwriting.

14 Q. Okay. You're not sure?

15 A. It doesn't -- it doesn't look like my

16 handwriting.

17 Q. Was this document reviewed by you on

18 or about the date it bears as part of the due

19 diligence that you were performing on modifying

20 the strategic plan in '06?

21 A. I don't remember ever seeing this

22 document, and so I think the answer would be no.

23 Q. Okay. Let's just look as it relates

24 to Allen, M. Are the numbers reflected here as it

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1 relates to you accurate, if you know?

2 A. Some of them are familiar to me,
3 others I know are wrong, and others I can't tell
4 you, so I can walk through those, if you want.

5 Q. Okay. And you have no idea who
6 prepared this?

7 A. No.

8 Q. And you have no idea what the purpose
9 is?

10 A. No. I would assume it was standard
11 governance with the Board or something of that
12 nature.

13 Q. Okay. Would you look at footnote
14 one?

15 A. Okay.

16 Q. The second sentence, "This is not
17 meant as any indication of expected future value
18 surrounding a possible Banta sale premium," do you

19 know what that means?

20 A. My reading of that is that whoever

21 prepared this document is not making any judgment

22 about the future value of the company, but in

23 preparing the document some valuation of our stock

24 had to be assumed, and they are just simply saying

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1 that.

2 Q. And were they considering a possible
3 Banta sale premium?

4 A. Yes. They say that they have
5 included a 20 percent stock price premium figure
6 for illustrative purposes only.

7 Q. Okay. And so in April, presumably in
8 April of '06, they were -- for purposes of doing
9 this KEESA summary they were calculating the
10 current stock price at a 20 percent premium in the
11 event there had been a Banta sale, is that -- is
12 that your understanding of what this document
13 represents, and have you ever worked the numbers
14 to see if it is?

15 MR. BOWEN: Okay. Objection;
16 compound, lack of foundation, and it
17 mischaracterizes the document.

18 THE WITNESS: I'm not sure I remember

19 everything you just asked.

20 MR. CARPONELLI: Okay.

21 THE WITNESS: Can I get that read

22 back to me, so I can answer it?

23 MR. BOWEN: Sure, you can have the

24 question read, sure.

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1 MR. CARPONELLI Q. Yes. Did you
2 ever -- correct me if I'm wrong. You're saying
3 you never saw this document before and you don't
4 know who prepared it?

5 THE WITNESS A. I don't remember ever
6 seeing this document, and I do not know who
7 prepared it.

8 Q. Okay. And so you didn't see it in
9 April of '06, even though it bears that date?

10 A. I don't remember ever seeing this in
11 April of '06, and I don't know why I would have
12 seen it in '06.

13 Q. Okay. Would this have been prepared
14 internally by your Accounting Department, if you
15 know?

16 A. It could have been prepared by our
17 Accounting Department. It could also have been
18 prepared by an outside firm or our either HR

19 Department, our Accounting Department, or a

20 committee of the Board.

21 Q. Okay. And you don't know which of

22 those it is?

23 A. I don't, and I don't know when it was

24 prepared.

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1 Q. Okay.

2 A. It would -- presumably it was
3 prepared after 12/31/05, because they say they
4 used the closing price of that date.

5 Q. Right. And it bears a date of
6 4/18/06, and it contemplates a premium for shares
7 in the event the company is sold, assuming it's
8 one of your documents at Banta --

9 A. Yes.

10 Q. -- is that correct?

11 MR. BOWEN: I'm going to object. It
12 says it's not taking that into account, so
13 you're mischaracterizing the document.

14 This is not meant as any
15 indication of expected future value.

16 MR. CARPONELLI: Well, okay. So let
17 me rephrase. That's a good point.

18 MR. CARPONELLI Q. Certainly the

19 possibility of Banta being sold for a premium was

20 part of the consideration of this document, would

21 you agree with me?

22 THE WITNESS A. I would agree.

23 MR. BOWEN: Objection, lack of

24 foundation.

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1 MR. CARPONELLI: If you know.

2 THE WITNESS: What I read here is the

3 author of this document was wanting to

4 calculate what the potential change of

5 control payment would be under the KEESA,

6 and to do that you needed to assume a stock

7 price.

8 MR. CARPONELLI Q. Okay. And do you

9 know who, if anybody, authorized a change of

10 control summary under the KEESA agreement to be

11 run?

12 THE WITNESS A. No.

13 MR. CARPONELLI: Okay. All right.

14 Fair enough. Let's mark this. This has

15 previously been marked as Jones Exhibit 1,

16 and I have a copy for you, Mike.

17 MR. BOWEN: Great. Thank you.

18 MR. CARPONELLI Q. Did you create

19 this document?

20 THE WITNESS A. I was involved in the

21 creation of this document.

22 Q. Who typed it?

23 A. I don't know. If I were to hazard a

24 guess, I would say Laurie Case in corporate

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1 communications.

2 Q. Okay. And who did she report to?

3 A. The head of corporate communications,
4 who worked up in Menasha, and I don't recall his
5 name.

6 Q. Okay. Do you know what the purpose
7 of this document was?

8 A. Yes.

9 Q. Okay. Do you know when it was
10 created?

11 A. Yes.

12 Q. When was it created?

13 A. It would have been created between
14 July 4th and July 20, 2006.

15 Q. And what was the purpose?

16 A. As I said earlier, after the Fourth
17 of July weekend Stephanie Streeter and I had a
18 conversation, and she asked me to prepare a

19 communication plan and an implementation plan for

20 the restructuring project that we had been

21 discussing throughout the early part of the year.

22 Based on that, I broadened the group

23 of people who knew about this restructuring plan

24 and to include corporate communications, which, as

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1 I remember, it was Laurie Case was the primary
2 contact, and her boss.

3 Mark Fleming was her boss, and Frank
4 Rudolph would have been involved. And this is one
5 document out of a series of documents that we
6 would have created.

7 We would have had perhaps, you know,
8 a letter to customers, we would have had a letter
9 to our employees, we would have had a script for a
10 conference call that we would have had, and these
11 documents were used so as to, you know, kind of
12 have a consistent communication method.

13 This specific document would have
14 been sent out to sales managers and plant managers
15 across Banta, so that they could field questions
16 from field sales reps, secretaries, factory floor
17 workers.

18 Q. Okay. Would you -- would you agree

19 with me that this was a script for those plant

20 managers and field superintendents to be able to

21 deal with questions regarding the restructuring?

22 A. It's not meant to be like a verbatim

23 script as I think of the word script, but it is

24 suggested responses, because these people would

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1 have just learned in a conference call of the
2 restructuring plan.

3 Q. Okay.

4 A. And we would have then sent this out
5 to them either via e-mail or hard copy or both, so
6 that as they get hit with questions they have some
7 idea of how they should respond.

8 Q. Okay. And did you create some of
9 these questions?

10 A. I probably created some of these
11 questions. Originally it was Frank Rudolph,
12 Laurie Case, Mark Fleming, myself. After I
13 brought Mark Deterding -- excuse me, not Mark
14 Deterding.

15 After I brought Bob Kreider and Bob
16 Thornton into the planning, which would have been
17 around July 11th or 12th, they would have also
18 participated in looking at this, and everybody

19 was, you know, offering up what kinds of questions

20 are we likely to get from people in the field.

21 Q. Okay. Do you know what the mailing

22 date on this was?

23 A. I talked to Jim Cyze and Kim Williams

24 on July 20th. This document would have been

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1 originally intended to go out on July 25th or
2 26th, right after the Board meeting, but I believe
3 it went out on Friday, July 21st, because we had
4 to accelerate our announcement.

5 Q. Okay. And why did you have to
6 accelerate your announcement?

7 A. Competitors had been notified of the
8 plans and the details and started calling in to
9 our sales force and our plants on the night of
10 July 20th, and it was -- the news had been -- had
11 been broken, and we started receiving concerned
12 phone calls the night of the 20th.

13 Q. Okay. All right. We'll get into
14 that. I know you want to go there, and I
15 promise --

16 A. I don't --

17 Q. I promise I'll ask you about it.

18 A. I don't need to go there.

19 Q. And so it was mailed on the 21st?

20 A. I believe it was mailed on the 21st,
21 after we had our conference call to announce the
22 restructuring.

23 Q. Who finally approved -- is this the
24 actual document that was mailed, and was there a

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1 cover letter that went with it?

2 A. I don't know if this is the actual
3 document or if this is one of the drafts. Based
4 on just the way I see how it ends on Page 2 and it
5 goes to Page 3 and there's kind of a break, and it
6 looks like there's some different fonts in here, I
7 would say that this is probably a draft.

8 There would have been a cover e-mail
9 or a cover letter, I'm sure, explaining this.

10 Q. Okay. And did you write the cover
11 letter?

12 A. I would have participated in the
13 editing of it.

14 Q. And who would have sent it?

15 A. As I recall, corporate
16 communications -- during the planning in July
17 corporate communications collected an e-mail
18 distribution list and a hard copy distribution

19 list, so they would have then sent out this

20 information.

21 Q. Okay. When it went out did it have

22 question 30?

23 A. I don't know. I don't know.

24 Q. Would there -- is it the same answer

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1 for questions one through twenty-nine?

2 A. Yes. I mean, I would assume that --
3 since I don't know if this is the final document,
4 and I actually think it's a draft, it's possible
5 that anything on here could have changed from the
6 final draft that was distributed.

7 MR. CARPONELLI: Okay. Can you -- I
8 couldn't find anything other than this in
9 the documents, and that production number
10 shows that it came from your documents.

11 Mike, could you get me the
12 final, if there is a final other than this,
13 and the cover letter? It wasn't produced.

14 I shouldn't say that. I cannot
15 say -- and I've been through those boxes,
16 eight boxes of documents.

17 I cannot say that I found a
18 cover letter and another version of this.

19 MR. BOWEN: Right. Well, I mean,
20 everything we were able to retrieve from
21 the limited files that were retained after
22 the acquisition have either been produced
23 to you or put in a privilege log.
24 MR. CARPONELLI: Okay.

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1 MR. BOWNEN: So, you know, I'll make
2 an inquiry.

3 MR. CARPONELLI: Okay.

4 MR. BOWEN: But I can guarantee you
5 that if someone comes up with something we
6 haven't produced to you I'm going to be a
7 little bit upset, because there was a --
8 there was a determined effort to get every
9 scrap of paper we could find.

10 MR. CARPONELLI Q. Okay. So I'm just
11 trying to get genuineness and authenticity. You
12 have no reason to believe that 30 was deleted
13 from --

14 THE WITNESS A. I don't know. I don't
15 know. In the process from July 4thth to July 20th
16 or so, when we were iterating through all of the
17 communication plans, I don't know what version of
18 this this is.

19 Q. Okay.

20 A. It could have been included. It

21 could have been that our general counsel, Ron

22 Kneezel, would have struck something like that.

23 Q. Okay.

24 A. Ron and Stephanie would have seen all

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1 communications.

2 Q. Is it fair to say that in the period
3 of time from July 4th through July 20th, before it
4 was mailed, that people raised the concept that
5 are we at risk of a takeover in terms of it
6 finding its way into a draft of the NBI Q&A?

7 A. Yes, one of the people who created
8 the initial list of questions that then answers
9 were created during this process would have raised
10 that question, saying, okay -- the process we used
11 was what types of questions are our managers in
12 the field likely to receive.

13 I mean, there are things in here,
14 just looking at it briefly, are you going to cut
15 benefits, how am I going to get my performance
16 review next year, so we were trying to understand
17 what people or anticipate what people in the field
18 might ask and then provide some Q&A for people.

19 Q. And so this question was asked and
20 this topic was considered in the NBI. And, in
21 fact, correct me if I'm wrong, ultimately in the
22 beginning of August Cenveo made a hostile takeover
23 attempt, is that correct?

24 A. This question was anticipated as a

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1 possible question from the field.

2 Q. Yes.

3 A. Yes. And yes, this was -- this

4 document was created prior to Cenveo's overture to

5 the company.

6 Q. And so it was -- it was wise to

7 include it, because ultimately there was a

8 publication in August that Cenveo was attempting a

9 hostile takeover?

10 A. That presumes that this was included

11 in the final draft, but if it was I guess it was

12 convenient.

13 I have no idea if this is in there.

14 Ron Kneezel may have told me not to, you know,

15 have something like this in there.

16 Q. Okay. Do you have a recollection one

17 way or the other? I mean --

18 A. I don't -- I don't recall.

19 Q. Okay.

20 A. I recall -- I recall a Q&A being

21 prepared for the purposes I've described.

22 Q. And you'll agree with me that this is

23 a Banta document?

24 A. Yes.

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1 Q. Let's just get this out of the way.

2 I'm going to show you what has been marked as --

3 A. Is there any chance I could have a

4 bathroom break?

5 MR. CARPONELLI: Sure. Absolutely,

6 absolutely.

7 (Whereupon a short

8 recess was taken.)

9 MR. CARPONELLI Q. Can you -- well,

10 actually, you don't have to do any marking. This

11 has already been marked.

12 Mr. Allen, I'm going to show you

13 what's been marked as Armbruster No. 12. I have a

14 copy for Mike.

15 Do you recognize this document?

16 THE WITNESS A. From the title page I

17 think I know what it is, yes.

18 Q. Is this the document -- were you

19 involved in creating this document?

20 A. Yes.

21 Q. Did I give you the one with the

22 yellow highlights on it?

23 A. Yes.

24 Q. Can I switch with you?

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1 A. Sure.

2 Q. Thank you. As far as you know, is
3 this a document that was presented in July of 2006
4 to the Executive Committee or to the Board or
5 both?

6 MR. BOWEN: It's a compound question.

7 THE WITNESS: This is either a draft
8 of or the final document that was presented
9 to the Board, and I was in the room for the
10 presentation.

11 MR. CARPONELLI: Okay. I have just a
12 couple questions.

13 THE WITNESS: This actually looks --
14 that's right. Okay.

15 MR. CARPONELLI: Is it --

16 THE WITNESS: Yes.

17 MR. CARPONELLI Is this a document that
18 you were there when it was presented?

19 THE WITNESS A. Yes.

20 Q. Okay. And Today's Objectives on

21 Page 3 --

22 A. My Page 3 says Executive Summary.

23 Page 2 says Today's Objectives. Page 3 in the

24 document, slide No. 2.

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1 Q. Yes. Okay. Yes. This is a power
2 point, right?

3 A. Yes, yes.

4 Q. Okay. So Page 2 of the document --
5 Page 3 of the exhibit and Page 2 of the document,
6 it says "share progress against strategic
7 aspirations to date."

8 Can you tell me what that means?

9 A. As I recall -- I'd have to go through
10 the document, but as I recall, what we did is we
11 laid out a strategic plan in 2004 with the Board
12 which the Board approved.

13 We gave them an update in 2005, and
14 this is the update in 2006, so we are sharing
15 progress against the objectives that we had been
16 working against.

17 Q. Okay. So that's not referring to
18 shares of stock? It's just you're sharing with

19 them progress against the strategic aspirations to

20 date?

21 A. Yes.

22 Q. Okay. And the second point is

23 discuss the business environment and strategic

24 issues.

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1 Do I take that to mean that you're

2 talking about the four cornerstones of your

3 strategic plan?

4 A. I'd have to flip through the entire

5 document. It would be -- it would be what's going

6 on in our markets, what's happening from a

7 competitive perspective, and what impact do those

8 have, both positive and negative, on our strategic

9 aspirations.

10 Q. Okay. Could you look at the next

11 page?

12 A. Yes. Executive Summary?

13 Q. Yes. And it -- and it says there on

14 the executive summary in the third paragraph, "The

15 four strategic cornerstones don't change, but the

16 business must be restructured and executional

17 intensity increased in order to take out costs,

18 focus on driving customer loyalty, and make it

19 easier to do business with Banta."

20 A. Yes.

21 Q. And you agree with that statement?

22 A. Yes.

23 Q. Okay. And is it a correct statement

24 that the restructuring wherein Mr. Cyze lost his

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1 job resulted in an annual cost reduction of 2.6
2 million?

3 A. The immediate print restructuring
4 cost reduction was 2.6 million dollars. As I
5 stated in some of our earlier discussions, there
6 were other phases contemplated that would increase
7 the ongoing cost reduction.

8 Q. Okay. But you would agree with me
9 that the termination of Cyze and the elimination
10 of his salary would be the immediate print
11 restructuring --

12 A. He would be part of that.

13 Q. Yes.

14 A. There were -- there were several
15 people who would have been included in the savings
16 here.

17 Q. Yes. There was one other group of
18 Kim Williams?

19 A. Kim Williams was another president.

20 Q. Right.

21 A. We demoted Mark Deterding, and as a

22 result we didn't have to hire some people, and

23 there were other people who ultimately lost their

24 jobs as well in the initial wave.

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1 Q. Okay. And there's no date on this.

2 Do you recall what date this was? It's just

3 dated -- well, it's dated July, but it doesn't

4 have a date.

5 A. It would have been July 23rd to 25th,

6 somewhere in there.

7 Q. Okay.

8 A. I'd have to look at a calendar for

9 2006 --

10 Q. Okay.

11 A. -- to figure it out.

12 MR. CAPONELLI: All right. Okay.

13 Will you mark this next, please?

14 (Whereupon said document was

15 marked Deposition Exhibit No.

16 17 as of 1/8/09.)

17 MR. CARPONELLI Q. This is an e-mail

18 from Sara Armbruster to Stephanie Streeter. It

19 does not show you receiving a copy of it.

20 Are you familiar with this e-mail?

21 THE WITNESS A. I don't remember this

22 e-mail, but I can also read it and see if it

23 triggers anything.

24 Q. Okay.

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1 (Pause.)

2 A. I don't recall ever seeing this.

3 Q. Okay. Do you remember a meeting on

4 May 12th, a Friday?

5 A. I don't.

6 MR. CARPONELLI: Okay.

7 MR. BOWEN: The 12th or 10th? This

8 says --

9 MR. CARPONELLI: Well, this is --

10 the e-mail is the 10th, but it refers to

11 a meeting on Friday, which would be the

12 12th.

13 THE WITNESS: Right.

14 MR. CARPONELLI Q. And you don't

15 recall attending?

16 THE WITNESS A. I don't. I don't know

17 what -- it looks like it's CMC, which was -- I

18 don't remember what the acronym stood for, but it

19 was the -- it was the senior management team of

20 the company, so it would have been basically all

21 of Stephanie's direct reports.

22 Q. Okay.

23 A. And it may have been -- we met

24 periodically throughout the year, and she may have

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1 been wanting to discuss the strat plan process.

2 Q. Okay. I'm going down to Peer

3 Comparisons. Do you know what is referred to? It

4 says, "Peer Comparisons: I've pulled data on our

5 peer group in the areas you requested."

6 Do you know what that is referring

7 to?

8 A. As I recall, we were looking at how

9 were our sales, general, and administrative

10 expenses as a percentage of sales compared to

11 other competitor peers, so it's trying to get a

12 sense are we -- are we running a tight ship or was

13 there too much cost in our organization relative

14 to the competitive peer set.

15 Q. In the second sentence it says, "I've

16 excluded restructuring and special charges, and in

17 cases where restatements created a lot of noise I

18 did not take the time to sort through that, so a

19 couple of companies have one year less of data

20 than the others."

21 What does -- what does the phrase "a

22 lot of noise" mean to you?

23 A. I can remember one of the problems

24 that we had inside of Banta is as we would go from

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1 year to year certain types of costs might get
2 allocated to different parts of the profit and
3 loss statement.

4 Q. Yes.

5 A. And as a result if you were looking
6 at comparisons you had some noise. In other
7 words, you were comparing an apple to an orange.

8 Q. I got you. So noise meant they
9 weren't true comparisons?

10 A. Right. And so --

11 Q. You needed to modify something?

12 A. Exactly. And when doing peer
13 comparisons inside the printing industry, for
14 example, marketing expense, sometimes that's
15 broken out as marketing expense, sometimes it's
16 included under sales, and some marketing expenses
17 might be included in manufacturing, so it's
18 difficult to get an apples to apples comparison.

19 Q. Okay. Now, on the very first
20 sentence it says, "Hi, Steph. I've attached a
21 file that has all of the data you requested for
22 Friday except for the comparison of 2004 and 2006
23 strategic plan numbers."
24 As far as you know, is that talking

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1 about the financial numbers for sales revenue,
2 cost, expenses, SC&A, through the first quarter of
3 '06?

4 A. As far as I know. The standard
5 process during the strategic plan reviewing cycle
6 was to take a look at our current year performance
7 and projections and compare that back to what we
8 said in 2004.

9 Q. Okay.

10 A. And then to identify variances and to
11 explain what the variances were.

12 Q. All right. Now, you discussed
13 Deterding giving you a call in January?

14 A. Deterding.

15 Q. Deterding?

16 A. D-I-N-G.

17 Q. Deterding?

18 A. Yes.

19 Q. How does that -- how did that

20 information get to Stephanie?

21 A. I told Stephanie about it in a

22 meeting that occurred in Stephanie's office where

23 Sara Armbruster, myself, and Stephanie -- it would

24 have been January/February of 2006.

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1 We were sitting down in Steph's
2 office to begin planning the work plan, what
3 needed to be accomplished during the strategic
4 planning review cycle that would happen between
5 January/February of '06 and the July Board
6 meeting.

7 Q. Okay.

8 A. And so Sara would have created a --
9 she would have created a detailed, you know, work
10 plan, and in that meeting I said we should be
11 looking at the restructuring and told her about
12 Mark Deterding's phone call.

13 Q. And that's because you relied on that
14 phone call, which said things were going to be
15 dead for the second half?

16 A. Yes. Mark was -- there were a couple
17 things, as I recall, in Mark's conversation. One,
18 Mark had lost some business, and so he was worried

19 about business, but that's more of a short-term

20 tactical issue.

21 Mark was concerned because his

22 performance, his business unit's performance, the

23 catalogue group, had been very good in 2005, but

24 he was running out of capacity, and so his ability

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1 to grow earnings by growing his business was
2 coming to an end.

3 Therefore, we either needed to invest
4 back into his business to grow it or do something
5 else with it.

6 We even talked about should we sell
7 it, so that was one of the options on the table.

8 Q. Okay. And he ultimately was let go?

9 A. No, he was ultimately demoted.

10 MR. CARPONELLI: Demoted. Okay.

11 That's right. You're right. You're
12 exactly right.

13 Would you mark this next,
14 please?

15 (Whereupon said document was
16 marked Deposition Exhibit No.

17 18 as of 1/8/09.)

18 MR. CARPONELLI Q. I just have a

19 couple. Have you ever seen this document before?

20 THE WITNESS A. No.

21 Q. Okay. You were not involved in its

22 preparation?

23 A. Not the preparation of the document.

24 I could have perhaps contributed content

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1 unknowingly.

2 Q. Okay. To Stephanie, who was
3 obviously the author of it?

4 A. I could have given it to Stephanie, I
5 could have given it to somebody during the
6 strategic planning progress, I could have given it
7 to Ginger Jones, who was our corporate, I could
8 have given it to Ron Kneezel or Geoff Hibner, any
9 number of people who could have collected
10 information and used it to prepare this document.

11 Q. I'm just going to ask you, is it your
12 understanding that Stephanie, Frank Rudolph, Geoff
13 Hibner, Ron Kneezel, David Engel --

14 A. Engelkemeyer

15 Q. Engelkemeyer, Dennis Meyer, yourself,
16 Edward Padraic Allen, Robert Kreider, Dan
17 Thornton, Mark Deterding, Preston Walklet, Richard
18 Johnson, Alison Heiser, Jim Cyze, and Kim Williams

19 had KEESA agreements?

20 A. Can you tell me what page that is?

21 Q. I'm referring to Paragraph 19 on

22 D3747. Is that consistent with your

23 understanding?

24 A. Paragraph 19, D3747?

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1 Q. Yes.

2 A. Okay.

3 Q. Paragraph 19.

4 A. That looks -- that looks like about

5 right. I'm surprised by two names there, but

6 other than that I'm not surprised by it.

7 Q. Okay. And do you see Paragraph 20 --

8 A. I do.

9 Q. -- where it talks about Cyze and

10 Williams were covered by KEESA prior to their

11 termination, and then it says, the last sentence,

12 "These individuals were informed of their

13 terminations prior to the hostile overture made by

14 Cenveo."

15 A. Yes, I see that.

16 Q. Okay. In the sentence above that it

17 says, "The KEESA's definition of 'Effective Date'

18 includes a retroactive impact in the event that a

19 covered executive is terminated during the period
20 of 180 days prior to the date on which the change
21 in control occurs and it is reasonably
22 demonstrated by the executive that such
23 termination of employment," quotes, "arose in
24 connection with or in anticipation of a change in

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1 control."

2 Do you agree with that?

3 A. Per my reading of the KEESA that you
4 gave me earlier, that looks like it's the same
5 wording.

6 Q. Okay. The next sentence refers to
7 the Cenveo hostile takeover only. Correct me if
8 I'm wrong.

9 Wouldn't the effective date kick in
10 if the -- if anybody was anticipating a change of
11 control with anybody other than Cenveo at the time
12 of the termination?

13 It's not limited to Cenveo, is it?

14 MR. BOWEN: Objection.

15 MR. CARPONELLI: In your
16 understanding.

17 MR. BOWEN: Objection. The question
18 calls for a legal conclusion from the

19 witness, and I discern no foundation for

20 the -- for the question.

21 MR. CARPONELLI Q. Well, let me

22 rephrase. You received your KEESA benefits,

23 correct?

24 THE WITNESS A. Yes, I did.

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1 Q. And Cenveo never had a transaction?

2 A. That's correct.

3 Q. And you received your KEESA benefits
4 because the transaction with R.R. Donnelley closed
5 on January 9th of 2007, is that correct?

6 MR. BOWEN: I think it was January
7 10th.

8 MR. CARPONELLI: January 10, 2007.

9 THE WITNESS: Yes, that's correct.

10 MR. CARPONELLI Q. Okay. And the
11 change in control under the KEESA agreement is not
12 limited to any particular company?

13 It's any company where there is an
14 anticipation or there otherwise arises an
15 anticipation?

16 THE WITNESS A. That would be my
17 understanding.

18 MR. BOWEN: I'm going to object. The

19 contract in question is a written document.

20 It speaks for itself.

21 It says what it says.

22 MR. CARPONELLI: Okay. I'm going to

23 show you what has been marked as Jones

24 Exhibit 3, a copy for you, Mike.

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1 MR. BOWEN: All right.

2 MR. CARPONELLI Q. Do you recognize
3 Stephanie's Streeter's handwriting?

4 THE WITNESS A. No. I mean, I don't
5 remember Stephanie's handwriting. So if you
6 handed this to me and told me to guess who it was,
7 I wouldn't have -- I wouldn't have known.

8 Q. If I tell you that I -- that I
9 believe this is Stephanie Streeter's handwriting,
10 would that refresh your recollection so that you
11 could comment that it appears to be her
12 handwriting?

13 A. (No response.)

14 Q. Or are you not familiar enough?

15 A. I don't -- I'm not familiar enough
16 with Stephanie's handwriting. It's been a couple
17 of years since she and I have even corresponded,
18 and I don't know, so I don't think I can vouch for

19 this being Stephanie's handwriting.

20 Q. Okay. Fair enough. Do you know if

21 Stephanie had a meeting with John Canning on June

22 29th of 2006?

23 A. I have never heard the name John

24 Canning before.

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1 Q. Okay. Did Stephanie ever tell you
2 about a meeting with John Canning on June 29th of
3 2006?

4 A. I have never heard of John Canning
5 before.

6 Q. Okay. If I told you that John
7 Canning -- there is a John Canning, Jr. who's the
8 chairman and a managing director of Madison
9 Dearborn Partners, would that refresh your
10 recollection?

11 A. I don't remember any conversations
12 that Steph ever had with me about talking to
13 Madison Dearborn Partners.

14 Q. Okay. Did you ever discuss with
15 Stephanie a leveraged buyout?

16 A. No.

17 Q. Never?

18 A. Never.

19 Q. Okay. Do you know if Madison

20 Dearborn Partners was involved in Jefferson

21 Smurfit?

22 A. I don't know.

23 Q. Boise Cascade?

24 A. I don't know.

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1 Q. Packaging Corp. of America?

2 A. I don't know.

3 Q. Okay. Do you know what a fairness
4 opinion is?

5 A. I think it's when an outside
6 company -- it might be an accounting firm or an
7 investment banking firm -- makes an opinion as to
8 whether or not an offer to buy a company is fair
9 and reasonable.

10 Q. Okay. And in the transaction with
11 Banta to R.R. Donnelley UBS did a fairness
12 opinion, is that right?

13 A. I don't know.

14 Q. Okay.

15 A. I'm sure someone did.

16 Q. Okay. You were never asked to be
17 part of an investment by the management team to
18 invest in a potential LBO?

19 A. Of Banta Corporation?

20 Q. Yes.

21 A. No.

22 Q. Okay. Stephanie never advised you

23 that she met with John Canning?

24 A. No.

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1 MR. CARPONELLI: Okay. Would you
2 mark this next?

3 (Whereupon said document was
4 marked Deposition Exhibit No.
5 19 as of 1/89/09.)

6 MR. CARPONELLI Q. I'm showing you
7 what has been marked as an exhibit, and the
8 document is entitled Minutes, CMC Meeting, May 12,
9 2006, Butte des Morts Country Club.

10 Did you attend this meeting?

11 THE WITNESS A. Yes.

12 Q. And what does CMC stand for?

13 A. I think it stood for Corporate
14 Management Council.

15 Q. Okay. Was this a senior management
16 team meeting?

17 A. Yes.

18 Q. Okay. I'm going to call your

19 attention to bullet point two on the first page.

20 A. Yes.

21 Q. Do I take it correctly that on May

22 12th of 2006 you discussed two separate structural

23 changes; A, put literature management and direct

24 marketing together and put publication, catalogue,

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1 and book together, manage the first for growth and
2 the second for cost; and B, put all the businesses
3 into a single print sector at a minimum for all
4 operations and administrative functions?

5 A. Yes, we had both of those
6 discussions.

7 Q. Okay. And so in May it had not been
8 determined to do A, is that correct?

9 A. It had not been determined. I didn't
10 make a final recommendation to Stephanie until
11 June. Stephanie wanted me to update the
12 executive -- the CMC as to what our thinking was.

13 I walked through where we were --
14 where I was in my thinking, which would have been
15 A, and structural change option B, which is one
16 large print sector, was offered as an alternative,
17 as we discussed.

18 You know, why go down to two, why not

19 go all the way down to one was kind of the

20 discussion.

21 Q. Okay. And the final decision took

22 place sometime, as I understand it, in July?

23 A. Yes.

24 Q. Okay.

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1 A. The decision -- the approval. I

2 mean, what decision are you referring to?

3 Q. Well, you hadn't made up your mind in

4 May, on May 12th, whether you were going to do A

5 or B, is that correct?

6 A. Me personally?

7 Q. Yes.

8 A. I had a strong preference for A, and

9 that was what my recommendation had been since

10 January or February.

11 Q. Okay. But the CMC had to approve it?

12 A. No, Stephanie and the Board of

13 Directors had to approve it. The CMC was

14 providing input into my plan.

15 Q. Okay. The CMC didn't vote on it?

16 A. No.

17 Q. Okay. So the CMC just discussed it?

18 A. Yes.

19 Q. They discussed A and B?

20 A. Right.

21 Q. And eventually Stephanie presented it

22 and A was approved, but that was sometime in July?

23 A. Right. And B was never even

24 presented to the Board.

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1 Q. Okay.

2 A. Never presented by me. I mean, I
3 have no idea if Steph talked about it.

4 Q. Do you know why this is marked
5 Exhibit 6, Mike? Did we mark this previously in
6 Cyze's dep? This is the exhibit to my complaint.

7 Okay. So let's just go with -- let's
8 just go with what has previously been marked as
9 Exhibit 6 to my complaint and ask you to review
10 that document.

11 A. I've scanned it.

12 Q. Okay. And do you know what the date
13 of this document is?

14 A. No.

15 Q. Okay. Was it in effect when you came
16 on in '04, January of '04?

17 A. I would say the date of this document
18 is likely to be after I came on board, because

19 Stephanie was not chairman when I came on Board.

20 Q. Okay. Now, this is Stephanie's

21 personal statement of her ethics. Did you

22 subscribe to these same ethics?

23 A. Yes.

24 Q. Okay. Was everybody expected to

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1 subscribe to these same or similar ethics?

2 A. At least similar ethics. It may --
3 it may have been exactly this verbatim. There was
4 a book -- we called it the Blue Book -- that our
5 general counsel distributed throughout the
6 corporation that had our ethics policy.

7 Q. Okay. Showing you what has been
8 marked as Exhibit 7 to my complaint, now this is a
9 separation and noncompetition agreement and
10 release of all claims, and it's between Jim Cyze
11 and Banta.

12 Correct me if I'm wrong. It's signed
13 by you on July 20th?

14 A. Yes, it is.

15 Q. Okay. And it was never signed by Jim
16 Cyze, as far as you know?

17 A. As I believe, this version of an
18 agreement was not signed by Jim Cyze. There

19 were -- there was a subsequent version, as I

20 recall, that Jim Cyze signed and then revoked.

21 Q. That's No. 8.

22 A. Okay.

23 Q. Okay. Correct me if I'm wrong. Was

24 the first notice that you gave of Jim Cyze's

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1 termination on July 20th, which is written up

2 here, date given to employee, July 20th?

3 A. Yes.

4 Q. Okay. And that document was signed

5 by you before you gave it to him?

6 A. Yes.

7 Q. And the understanding was he was

8 going to be terminated effective in August at some

9 time but that under the terms of this agreement he

10 had certain time to review it with his attorney,

11 and you dated the date upon which it was given to

12 him, and if everything was copacetic during the

13 interim his effective date of termination would

14 have been August --

15 A. Thirty-first.

16 Q. August 31st, is that correct?

17 A. Yes.

18 Q. All right. And this never came back

19 to you signed by him?

20 A. This version did not come back to me

21 signed.

22 Q. Okay. Showing you now what has been

23 marked as my complaint Exhibit No. 8, this is a

24 letter by Mr. Kneezel.

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1 Were you involved in the preparation
2 of this letter?

3 A. I had discussions with Mr. Kneezel
4 and Stephanie Streeter and Frank Rudolph and
5 perhaps Robin Shrader, who worked for Ron Kneezel,
6 about this document.

7 Q. Okay. And correct me if I'm wrong.
8 Was this document created at your urging and
9 request, if you know?

10 A. No, that's not how I would
11 characterize --

12 Q. Okay.

13 A. -- how this document came about.

14 Q. All right. This document is dated
15 July 26th, and it comes from Kneezel?

16 A. Yes.

17 Q. After July 20th did certain events
18 occur that caused this agreement to be prepared by

19 Mr. Kneezel?

20 A. Yes.

21 Q. Okay. Can you tell me, please, when

22 and what those events were?

23 A. It started on July 20, 2006. It was

24 the day that I was planning on telling Kimberly

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1 Williams, president of the publication group, and
2 Jim Cyze, the president of the direct marketing
3 group, that their positions were being terminated,
4 and I presented with them the document that we
5 reviewed a moment ago.

6 And it was late in the afternoon,
7 about 4:30, 5:00 o'clock in the afternoon. It was
8 a Thursday, I recall.

9 And we chose to tell Kim and Jim on
10 Thursday, the 20th, about five days or so prior to
11 receiving the final Board approval, about the
12 restructuring plan, because we wanted Kim and Jim
13 to have the opportunity to travel to Wisconsin to
14 meet with Stephanie Streeter face to face on that
15 Friday, the 21st.

16 I told Jim --

17 Q. Where did Jim work, by the way?

18 A. Jim worked in Oak Brook, Illinois, in

19 the same office that I worked in.

20 Q. Okay.

21 A. I went to Jim's office, and I closed

22 the door and I told Jim that the company was going

23 forward with a restructuring and we were going to

24 be presenting it to the Board, and that as a

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1 result of that restructuring he was not going to
2 have a position going forward.

3 Q. Now, did you tell him that before or
4 after you told Kim Williams?

5 A. You know, I don't really remember.
6 It was -- both conversations were short. I don't
7 remember which one I told first.

8 Q. Okay. All right. Go ahead. What
9 did he say in response?

10 A. He was -- as I recall it, he was
11 cool. I mean, I don't mean cold. He took it in
12 stride, wanted to understand how the business was
13 going to be restructured.

14 I told him that he had the
15 opportunity to speak to Stephanie and she would
16 meet with him face to face if he wanted to have a
17 conversation with her.

18 I asked him to keep it --

19 Q. That was the next day?

20 A. He could. He could talk to her that
21 night if he wanted to.

22 Q. Yes.

23 A. Or he could travel up to Wisconsin
24 the next day to meet her.

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1 Q. She was available?

2 A. She was available. That's why we did
3 it Thursday. And that this was not going to
4 become public until after the Board meeting and
5 that I wanted to tell him in advance so that he
6 could, you know, know when this was coming, so
7 that he could organize himself, and so that
8 because we were asking him to stay on as an
9 employee until the end of August we wanted him to
10 participate in any transition that might occur and
11 wanted him to be able to collect his thoughts and
12 his emotions, because we recognized that it could
13 be a difficult emotional experience the following
14 week, when this was announced to the organization.

15 Q. Okay.

16 A. I got up and I left Jim's office, and
17 I was walking down the hall to mine, which was at
18 the far end of the building.

19 Q. Now, did you give him any
20 instructions with regard to what he was to do with
21 the information that he was terminated?

22 A. I told him that -- I asked him that,
23 you know, he keep this in confidence and not
24 reveal it to anybody else.

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1 Q. His termination?

2 A. The restructuring and his
3 termination.

4 Q. What did he know about the
5 restructuring? What documents did you give him on
6 the restructuring?

7 A. I didn't give him any documents on
8 the restructuring, but I explained in a broad
9 sense that we were taking the five business units
10 and we were consolidating them down to two, that I
11 had selected Bob Kreider and Dan Thornton to run
12 those two units, that Mark Deterding was being
13 demoted and that Kim Williams and he were being
14 terminated, and that there were likely to be other
15 terminations as a result of the consolidation.

16 Q. Okay.

17 A. And that it would be announced the
18 following week. I gave him the separation and

19 noncompetition agreement, and I believe I gave him

20 a -- I don't know if I gave it to him. I know I

21 had a power point slide that had kind of a summary

22 of what he could expect.

23 I didn't expect him to try and read

24 through one of these long legal documents, so it

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1 was kind of a summary document that said you're
2 going to receive so many weeks of separation, so
3 much outplacement services, you know, this is
4 what's going to happen to your bonus, that type of
5 a thing, so that when he went home to his wife he
6 had answers to questions that he might have there.

7 Q. Let me ask you a question. Before
8 you met with Mr. Cyze did you know whether or not
9 he had an employment agreement?

10 A. I don't remember that he had an
11 employment agreement.

12 Q. Okay.

13 A. I would have -- I think I would have
14 been told that by the corporate HR and legal.

15 Q. So your understanding was he did not
16 have an employment agreement? He was an at-will
17 employee?

18 A. Yes, that's my understanding.

19 Q. Did he have a covenant not to

20 compete?

21 A. He did not.

22 Q. Did he have a nonsolicitation

23 agreement?

24 A. He may have. As I remember, our

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1 confidentiality agreement may have had a
2 nonsolicitation clause in it.

3 Q. Do you have a specific recollection?

4 A. I do not have a specific
5 recollection.

6 Q. Okay. And do you know how long that
7 lasted?

8 A. I do not know.

9 Q. Okay. Did the agreement that you
10 gave Mr. Cyze have a noncompetition agreement in
11 it?

12 A. As I -- as I recollect, the original
13 document that I gave to Jim Cyze on July 20th had
14 a severance component to it and a noncompetition
15 component to it.

16 Q. Okay. So that was something
17 different than what he had before?

18 A. Yes.

19 Q. Okay. And did the document say

20 anything about confidentiality?

21 A. Do you want me to go back to the

22 original document?

23 Q. If you can recall. As you sit here,

24 do you recall whether it did?

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1 A. I don't. I don't recall.

2 Q. Okay. Do you recall whether your
3 request to him about confidentiality was separate
4 from the agreement or in the power point
5 presentation or something that is contained in the
6 agreement?

7 A. I believe I reminded him that he was
8 an employee of the company and that I wanted him
9 to keep the information I was communicating to him
10 confidential.

11 Q. Okay. Now, would you look at the
12 agreement and see if you can find that provision
13 in the original Exhibit 7?

14 A. So you want me to go back to seven?

15 Q. Yes, and see if you can find it in
16 there.

17 (Pause.)

18 A. This document that I'm reading, which

19 is Exhibit 7, references on Page 4 a general
20 release and waiver, and I'd have to read that,
21 because that's being incorporated into this
22 agreement, to see if there's anything in that.
23 Q. Yes. Well, let me represent to you
24 it has nothing about not disclosing the

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1 restructuring.

2 You can look at Page -- Paragraph E

3 on Page 6, however.

4 MR. BOWEN: That would be a hint.

5 THE WITNESS: That would help.

6 MR. CARPONELLI: And probably D, too.

7 THE WITNESS: Well, as I read it,

8 this is pretty clear that he is being

9 instructed to keep things confidential that

10 are nonpublic and that he acknowledges and

11 reaffirms his agreement with the

12 confidential information, intellectual

13 property, and nonsolicitation of employees

14 agreement that he signed on September 1,

15 1999.

16 MR. CARPONELLI Q. Okay. It says --

17 but it doesn't mention specifically the

18 restructuring, is that correct?

19 THE WITNESS A. No, it talks about
20 nonpublic and otherwise confidential information
21 regarding the company and its operations.
22 Q. Okay. And when it says "employee
23 will not disclose," who is it referring to?
24 A. I would have to have an attorney's

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1 opinion on what that means.

2 Q. Okay. All right. Go ahead. What
3 happened next?

4 A. I left Jim Cyze's office and I
5 started to walk to the far end of the building,
6 which was where my office was, and about halfway
7 there I remembered that I was going to also talk
8 to Rick Arozco, who was V.P. of HR for the print
9 sector, and tell him what was going on, since he
10 had been left in the dark during all of this
11 planning.

12 I turned around and started going
13 back to Jim -- Rick Arozco's office and passed by
14 the lobby of our building, and I saw Jim Cyze and
15 John Singer, his V.P. of sales, enter the
16 stairwell next to the elevators. We were on the
17 third floor.

18 I went and spoke to Rick Arozco,

19 explained to Rick Arozco what was going on, and
20 left Rick's office and wandered over to John
21 Singer's office, and John Singer was there, and I
22 asked John Singer what the conversation was he had
23 with Jim Cyze in the stairwell by the elevator,
24 and John Singer told me that Jim Cyze had just

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1 communicated to him that he had fired him.

2 Q. Okay. Anything else?

3 A. That happened all that day?

4 Q. No. Did Singer tell you anything

5 other than that?

6 A. Yes, he may have. He may have. I

7 don't recall. He may have gone into more details

8 about the restructuring.

9 I don't recall.

10 Q. Okay. So correct me if I'm wrong.

11 Your testimony is that Cyze told his direct report

12 that he had been terminated?

13 A. Yes.

14 Q. Okay. And you take that to be a

15 breach of the confidentiality provision in

16 Paragraph 6?

17 A. I do.

18 Q. Okay. Did Singer tell you anything

19 about the restructuring?

20 A. I don't recall if he knew the detail

21 of the restructuring. I seem to recall that he

22 knew enough details that he knew that Dan Thornton

23 was going to be taking over the combined units and

24 that John Singer was then, "Well, what's going to

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1 happen to me?"

2 Q. Okay. Correct me if I'm wrong.

3 Confidential information within the company would

4 not include Cyze talking to his direct report

5 about anything that was going on at Banta, is that

6 correct?

7 A. No. Jim was considered a senior

8 officer in the company and was -- had privileged

9 access to information, nonpublic information, and

10 him revealing that to people on a

11 not-need-for-know basis was inappropriate.

12 Q. Well --

13 A. If Jim knew --

14 Q. -- I guess you and I -- I guess you

15 and I will have a disagreement about that, but the

16 point here is the only thing you've testified to

17 so far -- and I don't mean be argumentative -- is

18 that Cyze told his direct report that he was

19 terminated.

20 A. Right. That's my testimony.

21 MR. CARPONELLI: Okay.

22 MR. BOWEN: So far.

23 MR. CARPONELLI Q. And it was, in

24 fact, the case that he was terminated?

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1 THE WITNESS A. Yes.

2 Q. Okay. Is there anything else that
3 you can think of that occurred as it related to
4 Cyze and a breach of his confidentiality?

5 A. Yes.

6 Q. What else?

7 A. That evening Frank Rudolph had driven
8 down from the Menasha headquarters. He was the
9 V.P. of HR for the --

10 Q. Now, excuse me. Before you -- before
11 you answer that, at this point you've told Arozco
12 of the restructuring, you've told Singer of the
13 restructuring, you've told Kim Williams of the
14 restructuring, and you've told Cyze of the
15 restructuring, so we have at least four people who
16 are aware of the restructuring, not to mention
17 Stephanie Streeter and all the members of the CMC
18 Committee.

19 A. Yes.

20 Q. Okay. Anybody else know about the

21 restructuring? Kneezel?

22 A. Well, Kneezel would have been part of

23 CMC. Corporate communications had helped me

24 prepare the documents we reviewed earlier, Ginger

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1 Jones.

2 I can't remember if she was part of
3 CMC, but Ginger Jones helped me with the -- with
4 pulling together kind of the financial analysis.

5 Robin Shrader, I believe, knew,
6 because I believe Robin was actually the person
7 who probably created the legal documents that you
8 and I are looking at.

9 She reported to Ron Kneezel. Our
10 Board of Directors, at least the Executive
11 Committee of our Board of Directors, I believe,
12 knew.

13 Q. So we've got 20 to 40 people who were
14 familiar with the restructuring?

15 A. Twenty is probably about the right
16 number.

17 Q. Okay. All right. Go ahead. I
18 interrupted you.

19 A. So that evening Frank Rudolph, V.P.

20 of HR for the corporation, had traveled from

21 Menasha down to Illinois, and he and Rick Arozco

22 and I went to dinner.

23 Rick was -- reported jointly to both

24 Frank and I in his role as the head of HR for the

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1 print sector.

2 That night at dinner I received a
3 telephone call from Kimberly Williams, who I had
4 terminated, or at least talked to her about the
5 restructuring and told her she was going to be
6 terminated the end of August, and she told me that
7 she had received a phone call at home from Andy
8 Johnson, who was the plant manager for our plant
9 in Kansas City, Missouri, and that Andy was asking
10 questions about her being fired and the
11 restructuring, because Andy had received a call
12 from Peter Hanson, who was a senior executive at
13 Cadmus Communications, one of our competitors, and
14 was a former Banta executive.

15 A few -- she talked to him and tried
16 to disarm things. And then she received a phone
17 call from Ritt Schiano, who was a sales manager
18 working in the publication group, Kim Williams'

19 group, because he had received a telephone call,
20 as I recall, from a gentleman by the name of Todd
21 Baridelli, who also worked for Cadmus
22 Communications, and Todd Baridelli was saying, "I
23 know you guys are going to have a restructuring,
24 we're going to go after your business," you know,

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1 that type of thing.

2 And so the publication -- the
3 publication group that Kim Williams led was now
4 running with information, and they were being told
5 by former executives of Banta, who were now
6 executives at our competitors, that they were
7 going to be contacting customers the next day and
8 trying to tell them about all of this and what was
9 going on in the company.

10 I was furious. I called Ron Kneezel,
11 general counsel, to advise him of what had
12 happened.

13 I can't remember if it was Ritt
14 Schiano or Andy Johnson, but one of them told Kim
15 Williams that Peter Hanson got this information
16 from Jim Cyze.

17 Q. So we're talking thirdhand?

18 A. Absolutely, thirdhand. So I called

19 Ron Kneezel, explained what was going on.

20 MR. BOWEN: Don't tell what you

21 told -- the details of what you told Mr.

22 Kneezel.

23 He's counsel. That's

24 privileged.

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1 THE WITNESS: Okay. So I called Ron
2 Kneezel. We had a -- we had a discussion,
3 and I placed a call to Jim Cyze on his cell
4 phone, which was unanswered.

5 I called him at home and spoke
6 to his daughter, who said that he was not
7 home, and so I called him back on his cell
8 phone and I left him a message saying that
9 he should get in touch with me immediately,
10 that we had a situation that had developed
11 and I wanted to talk to him about it, and
12 explained that Peter Hanson had information
13 on the restructuring and that it would
14 appear that he was the source.

15 I received a phone call in ten
16 or fifteen minutes from Jim Cyze, and Jim
17 denied having spoken to anybody.

18 And that night I then spoke

19 with Stephanie Streeter and we made the
20 decision that we couldn't wait to go to the
21 Board of Directors at the Board meeting
22 four or five days later, and we decided
23 that we were going to make the formal
24 announcement public about the print sector

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1 restructuring the following day.

2 MR. CARPONELLI Q. The 21st?

3 THE WITNESS A. The 21st, that Friday.

4 And so we went public with the announcement and

5 followed up on all of the communication planning

6 that we had put in place and escalated it to that

7 day.

8 Q. So just so that I am clear, Cyze

9 denied having spread the rumor?

10 A. Yes.

11 Q. Okay. But you elected not to believe

12 him?

13 A. I did not believe him.

14 Q. Okay.

15 A. Well, I don't -- yes, I did not

16 believe him.

17 Q. Okay.

18 A. So we get to Exhibit 8.

19 Q. Yes.

20 A. Because I think your original

21 question at the beginning of this --

22 Q. Yes.

23 A. -- is how did this come about.

24 Q. Yes.

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1 A. I don't recall the timing, but
2 between July 20th and the date on this document,
3 July 26th, Stephanie Streeter, Ron Kneezel, and I
4 had a series of conversations, as you can expect.

5 I was a proponent of not replacing
6 this document, the original document that we gave
7 Jim Cyze.

8 I felt that it was important that we
9 continue to go forward with that, and if Jim had
10 been the source of the leak it pointed to me that
11 it was all that much more important that we have a
12 noncompete, and so I really felt that, you know,
13 going forward with this document as it was
14 originally given to Jim on July 20th was the way
15 to go.

16 Between July 21st and July 26th the
17 decision was made to change the original offer,
18 continue with the offer.

19 There had been some discussion about
20 pulling everything off the table, including all of
21 his severance, and to basically let him go
22 effective immediately.

23 We ultimately created a document that
24 was signed by Ron Kneezel and dated July 26th.

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1 Q. Well, the letter is signed by Ron
2 Kneezel. I don't have a copy of the agreement
3 signed by you.

4 Did you sign a copy of Exhibit 8, the
5 second one?

6 A. I believe I didn't sign it before we
7 gave it to him. I remember specifically being
8 chastised by our -- by our counsel I should not
9 have signed this one, the first one that I gave to
10 Jim on the -- on the 20th.

11 They said, "No, no, you should have
12 him sign it first and then you can sign it," so I
13 wouldn't have signed the second document that we
14 gave to Jim until after he signed it.

15 Q. Okay. And Cyze never signed it?

16 A. It's my recollection that Jim
17 actually did sign this document, and then he came
18 back to my office in August or in September and

19 revoked it.

20 I'd have to read it, but I believe he

21 had 30 or 45 days or 60 days to revoke.

22 Q. Under the release provisions?

23 A. Yes. I'd have to go through it, but

24 I think there's a --

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1 Q. How long did he work at Banta after
2 the 20th?

3 MR. BOWEN: How long did Cyze work at
4 Banta?

5 MR. CARPONELLI: After the 20th of
6 July.

7 MR. BOWEN: You mean actually work?

8 MR. CARPONELLI: Actually appear
9 there at the offices.

10 THE WITNESS: I'm not sure I saw Jim
11 again as an employee. Jim showed up in our
12 offices in August or September, came to my
13 office.

14 I was on the phone. My door
15 was closed. He knocked on the door, I
16 opened it up, and he handed me the revoked
17 version of this.

18 MR. CARPONELLI Q. Okay. Well, when

19 did -- when did you have his personal belongings

20 removed from the Oak Brook office?

21 THE WITNESS A. I don't recall. As

22 I -- as I -- as I recall, he came in, and Rick

23 Arozco, the V.P. of HR, who was also officed in

24 our Oak Brook complex, helped him remove his

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1 belongings, but I don't recall when that occurred.

2 Q. Okay. Is it your understanding that
3 between July 20th and July 28th that Mr. Cyze
4 continued to work for Banta at the offices in
5 Oak Brook?

6 A. Well, I know that Jim didn't show up
7 to work on July 21st. On that following Monday,
8 which would have been about the 24th or the 25th,
9 I was at the Board meeting, so I don't know if he
10 came into the office.

11 That may be when he removed his
12 belongings.

13 Q. Okay. This letter is addressed to --
14 is addressed to him in Orland Park. Is that --
15 was this -- the Exhibit 8, is that your
16 understanding of his home address?

17 A. Yes.

18 Q. Okay. So is it your understanding

19 that he stopped attending work sometime between

20 the 20th and the 26th?

21 A. Yes. I would guess that he did not

22 show up for work again. He didn't show up for

23 work on the 21st.

24 Q. Okay.

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1 A. And I was in the office on the 21st.

2 Q. What was your understanding of his
3 status during the revocation period on the -- on
4 Exhibit 8?

5 A. During the revocation period? Well,
6 my understanding is he was no longer an employee.

7 Q. As of July 28th?

8 A. As of July 28th, and that there was a
9 period under which he could revoke this, but he
10 wasn't an employee during that period.

11 Q. Okay. So the fact that he revoked it
12 doesn't change your understanding of the fact that
13 he was terminated on July 28th?

14 A. No.

15 Q. That was his last day?

16 A. Yes.

17 Q. Or was his last day the 20th?

18 A. Well, this would say that the

19 effective date of the termination was on July

20 28th, so I believe this would be the proper

21 documented separation date.

22 Q. Although this was never executed by

23 him or you?

24 A. It was signed by him. I believe I

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1 would have signed it.

2 Q. You think you signed it?

3 A. I believe so. And then he revoked
4 it.

5 Q. During the revocation period?

6 A. Yes.

7 Q. Which means that there was no
8 release, no noncompetition, and no written
9 agreement as it relates to his termination, is
10 that correct?

11 A. There was no release that I know of,
12 there was no noncompetition, and I don't know if
13 there was anything executed between -- most of the
14 communication that occurred with Jim after the
15 20th occurred between our Legal Department, and he
16 had some conversation with Rick Arozco --

17 Q. Okay.

18 A. -- about getting his belongings.

19 Q. All right. Did you ever learn of any
20 other breach of a code of ethics by Cyze other
21 than what you've testified to here?

22 A. Well, in addition to calling -- well,
23 in addition to what I've now learned from his
24 deposition, that he did call Peter Hanson, I know

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1 that he also called Joe Wofolk and he called Larry
2 Panazzo.

3 Those were -- Joe Wofolk was an
4 employee, Larry Panazzo was not. I don't believe
5 I can attest to anything else that would say he
6 violated any ethics.

7 Q. Okay. Now, were there any
8 consequences to Banta by going public on the 21st
9 as opposed to going public after the Board
10 meeting?

11 A. I would say that we had -- we had
12 significant market communication and competitive
13 problems for a week or two.

14 Q. Can you identify with a reasonable
15 degree of certainty any lost sales --

16 A. No.

17 Q. -- as a consequence?

18 A. No.

19 Q. Okay. Can you identify with a
20 reasonable degree of certainty any lost profits?

21 A. Only expenses that would have been
22 incurred by us to manage the communication problem
23 that had been created.

24 Q. And what are those?

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1 A. It would have been time, it would
2 have been travel, you know, going out to see
3 customers, getting in front of customers, holding
4 conference calls, things of that nature.

5 Q. What specific conference calls,
6 visits to customers, and the like --

7 A. I don't --

8 Q. -- can you recall?

9 A. I don't recall.

10 Q. Okay. So you have no specific
11 recollection of any specific expenditures as a
12 consequence of going public on the 21st as opposed
13 to the --

14 A. I don't recall any specific
15 expenditures.

16 Q. Okay. And under Exhibit 6 can you
17 identify, at least as it relates to Stephanie's
18 personal statement of ethics and values, where a

19 specific provision would have been violated by

20 Cyze, had he been subject to the same statement of

21 ethics and values?

22 A. By my reading I would say there are

23 two of the bullets that you could say his actions

24 the evening of the 20th would have at least

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1 violated the spirit of, and that is that we live
2 by the highest standards of ethics and integrity
3 and we honor our commitments.

4 Q. Okay. And is it your impression that
5 Cyze told you after you advised him of his
6 termination that he was not going to reveal to his
7 direct reports that he was terminated?

8 A. Yes.

9 Q. He told you that?

10 A. You asked me if it was my impression,
11 I thought.

12 Q. Did he say that to you?

13 A. I don't recall.

14 Q. Okay. That was your impression of
15 what his responsibility was?

16 A. I don't -- yes, that's my impression
17 of what -- of how that meeting transpired.

18 Q. Okay. But he never told you what he

19 would and wouldn't do as it relates to the

20 circumstances, is that correct?

21 A. No. He told me that night that he

22 had not talked to anybody.

23 Q. I guess the question is if someone is

24 terminated and they inform a direct report that

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1 they've been terminated without advising them of
2 the restructuring whether or not it's legitimate
3 to presume that he's violated some kind of code of
4 confidentiality, and obviously in your mind you
5 felt it was so?

6 A. Well, remember, we went to Jim on
7 July 20th so that Jim could talk to Stephanie. We
8 went to Jim and told him on July 20th prior to the
9 Board so that he could prepare himself for what
10 would be obviously lots of questions the following
11 week, when it became public.

12 We went to Jim on July 20th and told
13 him that the termination wasn't effective
14 immediately but it was effective August 31st and
15 that we were asking him to participate in any
16 transition and implementation that would occur in
17 that ensuing period, and so based on the spirit of
18 why we were going to him and how we were having

19 this conversation I expected him to honor his
20 commitments and the code and the policy and live
21 up to the way he normally conducted himself.

22 Q. But you will agree with me there is
23 nothing specific that said don't tell someone that
24 you're terminated?

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1 Not to be argumentative, but there
2 was no written document and no written statement,
3 no expressed verbal statement that said don't tell
4 anybody you've been terminated?

5 A. No, I remember telling him to keep
6 this information confidential.

7 Q. Did that include telling -- not
8 telling his wife?

9 A. No, he could tell his wife.

10 Q. And that was actually part of it. So
11 it was understood on your part that when someone
12 gets terminated they're going to tell certain
13 people that they have been terminated.

14 The key here was keeping the
15 restructuring confidential, don't you agree with
16 me?

17 A. Yes, the key would have been not
18 revealing that we were restructuring the

19 organization and what was going to transpire the

20 following week.

21 Q. Okay. All right. And you're under

22 the impression in his deposition, in reading his

23 deposition, which you did before your deposition,

24 that he said that he revealed the restructuring?

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1 Is that your reading of his dep?

2 A. That's my recollection. I'd have
3 to -- it's been six months or so. I don't know
4 how long ago I read that.

5 Q. What else did you do in preparation
6 for your deposition besides read Mr. Cyze's dep?

7 A. I spoke with Mr. Bowen.

8 Q. Anything other than that? Did you
9 look at any documents?

10 A. Yes, we looked at documents.

11 Q. What documents did you look at?

12 A. We looked at -- I saw this NBI Q&A
13 document.

14 Q. Did you see Stephanie Streeter's
15 memo?

16 A. Which memo?

17 Q. The handwritten one.

18 A. No.

19 MR. BOWEN: We have the documents the

20 witness reviewed, if you'd like to look at

21 them specifically.

22 MR. CARPONELLI: Please. Thank you,

23 Mike.

24 (Documents tendered.)

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1 MR. CARPONELLI Q. Mr. Allen, do you
2 remember an incident where there was fake vomit
3 placed in front of Jim Cyze?

4 THE WITNESS A. It never happened
5 while I was with the company.

6 Q. Okay. You didn't -- you don't know
7 about that? You never heard about it?

8 A. I've read about it in your complaint.

9 Q. But you never -- you didn't -- you
10 didn't participate in that?

11 A. It never occurred when I was with the
12 company.

13 Q. Well, you never saw it happen?

14 A. It occurred in a budget meeting, if I
15 remember the complaint, and I went to all of the
16 budget meetings, so --

17 Q. So you dispute that it occurred?

18 A. While I was with the company.

19 Q. Okay. So you think it happened

20 before you were with the company?

21 A. I don't know.

22 Q. Did it happen while Stephanie

23 Streeter was with the company?

24 A. I don't know if it happened. I don't

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1 know.

2 Q. Okay. What about a gold chain placed
3 around his neck --

4 A. It never --

5 Q. -- with a dollar sign?

6 A. It never happened in a meeting that I
7 was in while I was with the company.

8 Q. Did you ever make disparaging remarks
9 about his division in a budget meeting or any
10 other meetings?

11 A. I suppose that would be defined by
12 the recipient of any remarks. If I was
13 challenging the budget, he had a business unit
14 that had at least one plant, maybe two, that was
15 struggling to even turn a profit, so there was a
16 lot of, you know, pushback on the financial
17 numbers of certain parts of his business unit.

18 Q. So would you ever be rude about it?

19 A. I don't think so.

20 Q. Okay. Would you ever be loud about

21 it?

22 A. No.

23 Q. Would you ever be cynical about it?

24 A. No.

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1 Q. So as far as you can recall, you've
2 never criticized Cyze or his unit in any way that
3 would cause him to be offended?

4 A. No.

5 Q. And he never expressed to you that he
6 was offended by certain of the things that you
7 said or did to him?

8 A. Never.

9 Q. You said you became furious when you
10 heard about the situation with the disclosure of
11 his termination?

12 A. On July 20th, yes.

13 Q. Yes. And when you became furious did
14 you raise your voice to anybody?

15 A. No, I don't think so. I remember I
16 used my cell phone to call Ron Kneezel and talking
17 to Ron, and then I had a conversation, as I said,
18 with Jim finally on the phone and spoke with

19 Stephanie.

20 I don't --

21 Q. When you talked to Jim were you rude

22 or abusive to him at all?

23 A. No.

24 Q. Were you screaming at him?

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1 A. No.

2 Q. Were you raising your voice?

3 A. No.

4 Q. Okay. And he denied it and you
5 didn't accept that?

6 A. He denied it. I passed that
7 information on to Stephanie and to Ron Kneezel,
8 and we made the decision that the information had
9 leaked somehow and that we needed to accelerate
10 our announcement of the restructuring, so that we
11 could do it the next day.

12 Q. And how did it happen that the
13 original termination agreement was revoked? Whose
14 decision was that?

15 A. Ultimately it would have been
16 Stephanie's decision, I believe. I don't think
17 Ron Kneezel would have made that decision
18 unilaterally.

19 And Stephanie may have consulted the

20 HR Committee of the Board or the Executive

21 Committee of the Board, but I'm speculating now.

22 Q. Now, I guess I'd call it his exit

23 interview on July 20th when you met with him. Did

24 you take any security precautions, you know, like

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1 turning off his computer or limiting access on his
2 phone?

3 A. No.

4 Q. Okay. Did you restrict any access to
5 clients or customers?

6 A. No.

7 Q. Did you restrict any access to other
8 employees, specifically mention that?

9 A. No.

10 Q. Did you give Cyze any instructions
11 whatsoever specifically on what he was to do after
12 you left him on the 20th?

13 A. Other than keeping the information
14 confidential and reviewing the document and
15 then -- the documents I had given him and letting
16 me know whether or not he wanted to speak to
17 Stephanie, I gave him no specific instructions.

18 Q. Were you monitoring his activities

19 when you discovered he was in the hallway with

20 Singer?

21 A. No.

22 Q. Okay. Did you reveal to any clients

23 that Cyze was leaving?

24 A. After the announcement, yes.

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1 Q. And who was that?

2 A. Well, I spoke with -- I don't know if

3 I spoke with any customers of the direct marketing
4 group.

5 I spoke with, I believe, a customer
6 from Watt Publications, which was a publishing
7 customer, and I would have at that time discussed
8 the fact that we restructured, that Jim had been
9 removed, Kim Williams had been removed, things of
10 that nature.

11 Q. And when did that take place?

12 A. That would have occurred between July
13 21st and, you know, a week or two after that.

14 Q. Okay. Did you talk to anybody else
15 and tell anybody else after the 21st that Cyze had
16 been terminated?

17 A. I don't recall.

18 Q. Did Jim Cyze talk to you prior to the

19 weekend of July 4th and ask you about rumors

20 whether the company was going private?

21 A. No.

22 Q. Did you have a conversation with him

23 before the weekend of July 4th?

24 A. Yes.

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1 Q. Tell me about the conversation you
2 had with Mr. Cyze prior to the long Fourth of July
3 weekend.

4 A. I don't know how far in advance of
5 July 4th it was. It was sometime in mid to late
6 June.

7 I remember it because I was startled
8 and surprised by the conversation. Jim and I
9 worked in the same office complex. He was at the
10 far end of the hall I was.

11 And so I oftentimes would, you know,
12 wander the halls, stick my head in and say hello
13 to people, and I got to Jim and I walked in and
14 probably had some niceties, and then Jim asked me
15 if there was a restructuring of the print sector
16 that was going to occur.

17 Q. And what did you say to him?

18 A. I said that as part of the strategic

19 plan and review process we always look at

20 different options, that there was no plan to

21 restructure the print sector at that time.

22 This was -- this was at the point

23 where Stephanie had not -- had not made the

24 decision and had said that we would discuss it

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1 with the Board, but there was no action to be
2 taken.

3 Q. Okay. Would you agree with me then
4 at this conversation in mid to late June Cyze told
5 you that he had heard from some third person that
6 there was a restructuring plan afoot and he asked
7 if you there was any truth to it?

8 A. He asked me about the restructuring
9 plan, whether or not it was afoot. I don't know
10 if he said that he heard it from someplace else or
11 if he just was asking.

12 I've learned subsequently -- I called
13 Frank Rudolph the same day and I said, "Frank,
14 someone in corporate" -- because there was no one
15 else really who knew at that time, "Someone in
16 corporate has leaked, because Jim came to me about
17 this."

18 I learned within a couple of days --

19 it might have been a week, it might have been
20 two -- that the source of the leak was our V.P.
21 and corporate comptroller, a woman by the name of
22 Ginger Jones.
23 Ginger, I guess, who had been working
24 with us on it, innocently had asked Joe Wofolk,

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1 who was the vice-president of finance for the
2 direct marketing group and a subordinate of Jim
3 Cyze, whether or not he had been involved in the
4 preparation of the restructuring information, the
5 review of the financial information, and Joe said
6 no, and Joe then went to Jim Cyze, and Jim Cyze
7 hit me with it unexpectedly.

8 Q. Okay. So is it a fair statement then
9 that when Cyze talked to you you were under the
10 impression that the restructuring was completely
11 and totally confidential and it came as a shock
12 that he knew about it?

13 A. Yes, I was surprised that he knew
14 that something was being planned. He didn't have
15 any of the details, but I was surprised that he
16 knew that something was being planned or was
17 being -- I should say being considered, because I
18 would argue at that time there was no

19 restructuring effort that had been approved.

20 Q. Well, there had been a discussion in

21 May with the CMC team involving --

22 A. Absolutely.

23 Q. -- subject A and B.

24 A. We had had --

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1 Q. And you said coming out of that you
2 had decided it was going to be A?

3 A. We had had discussions going back to
4 January/February. I had, you know, discussions as
5 part of the strategic planning process, so there
6 had been multiple conversations about
7 restructuring.

8 I had been doing work on
9 restructuring. It's just, you know, that plan
10 hadn't been approved and I didn't have a blessing.

11 Q. Okay. But you -- but you came out of
12 the CMC meeting, you were pretty clear to me that
13 A was the plan and it ultimately was approved?

14 A. A was my recommendation.

15 Q. Right.

16 A. And it was -- ultimately that's what
17 we implemented.

18 Q. Okay. And Ginger Jones is not on

19 the -- was not a part of that meeting?

20 A. I don't know. She might have been.

21 I don't know. You know, I can't --

22 Q. What about Joe Wofolk?

23 A. No, he would not have been there.

24 Q. Okay. So correct me if I'm wrong.

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1 It was clear to you that when you talked to Cyze
2 Cyze had known something that you understood to be
3 confidential?

4 A. I knew -- yes, Jim asked me whether
5 or not we were restructuring. I don't know if Jim
6 told me he heard it from another source, as I said
7 earlier.

8 I assumed it had leaked because we
9 had been doing a lot of work on it. It's possible
10 Jim could have been fishing.

11 Q. Well, now you're assuming that --
12 well, strike that. I thought you told me that you
13 learned that there was a leak that came from
14 Ginger Jones?

15 A. I learned that later.

16 Q. Okay. So when you say he could have
17 been fishing you're not being completely accurate,
18 because you later learned that he wasn't fishing,

19 that, in fact, Ginger Jones had leaked the

20 information and he had learned it?

21 A. I thought you were asking me about at

22 the time when I met with Jim.

23 Q. What your mind -- state of mind was?

24 A. Yes, yes.

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1 Q. Okay. But you don't know to whom
2 else Ginger Jones leaked the -- Ginger Jones
3 leaked the information?

4 A. I don't.

5 Q. Okay. And you don't know whether Joe
6 Wofolk leaked the information to anybody else?

7 A. I don't.

8 Q. Okay. And do you recall that the
9 question Cyze asked was whether or not the company
10 was going private and/or there was a
11 reorganization?

12 A. He asked about a reorganization or a
13 restructuring. I don't remember his phraseology.

14 Q. He didn't say anything about going
15 private?

16 A. No.

17 Q. Okay. And a -- and a reorganization,
18 would that have been a change of control?

19 A. No.

20 Q. Why wouldn't it have been?

21 A. A reorganization is moving the

22 organizational box around.

23 Q. Well, let me ask you a question.

24 Don't people use the phrase reorganization to

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1 include a plan of merger on occasion?

2 A. I don't know. I only -- actually,
3 I've never been part of a merger prior to the R.R.
4 Donnelley acquisition --

5 Q. Okay.

6 A. -- of Banta.

7 Q. Okay. Would you agree with me that
8 Banta was reorganized as a consequence of the
9 merger that took place on January 10th?

10 A. No, I think Banta ceased to exist.

11 Q. Okay. Anyway, we'll move on. So
12 before you met with Cyze you knew that there had
13 been information leaked, so why was it that you
14 told him simply to not tell anybody if you knew it
15 was out already, the information?

16 A. When did -- which meeting with Cyze
17 are we talking about?

18 Q. I'm talking about the termination on

19 July 20th. You knew then that Cyze had already

20 heard about the restructure, which actually took

21 place on July 20th.

22 Why was it that you were telling him

23 not to circulate that information if you knew the

24 information was out?

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1 A. Because it could be publicly and
2 materially relevant, and as an insider when you
3 have insider information in a publicly-traded
4 company you hold that confidential.

5 Q. So you were telling him as an
6 insider?

7 A. I told him as a -- as an employee of
8 Banta that was going to remain as an employee of
9 Banta until August 31st and as a direct report of
10 mine that the information was to remain -- to
11 remain confidential.

12 Q. Even though you knew it was not
13 confidential?

14 MR. BOWEN: I'm going to object at
15 this point. We're talking about two
16 different times.

17 MR. CARPONELLI Q. Okay. All right.
18 Well, let's rephrase it. Did you tell -- were you

19 telling Cyze to keep what you told him

20 confidential or to keep what others had told him

21 confidential?

22 THE WITNESS A. I told him on July

23 20th to keep the information about the

24 restructuring, the details I had just given him,

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1 including his termination, confidential.

2 I'll amend that and say I did expect
3 him to go home and talk about it with his wife.

4 Q. Now you're saying the details of the
5 restructuring. Previously your testimony was just
6 the termination.

7 Are you --

8 A. No, I didn't say that.

9 MR. BOWEN: Objection.

10 MR. CARPONELLI Q. I think you did,
11 but the record will speak for itself. Is that
12 what your testimony is?

13 THE WITNESS A. I would correct it and
14 say the following. When I talked to him on July
15 20th I told him -- and I thought I explained this
16 earlier -- that Mark Deterding was being demoted,
17 that Kim Williams was being let go, that we were
18 consolidating five business units into two

19 business units, and that all of that information

20 would be details about the restructuring.

21 I did not tell him his position was

22 the only position being eliminated.

23 Q. But you told him his position was

24 being eliminated?

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1 A. Yes.

2 Q. And you told him -- your recollection
3 is now that you told him not to talk about any of
4 those elements that you've just gone through?

5 A. That's correct.

6 Q. Okay. And do you know what
7 specifically he told anybody else other than his
8 termination to Singer?

9 A. I don't recall how many details John
10 Singer had of the overall restructuring. The
11 competitors had details about the restructuring.

12 Q. Now, let me ask you a question. When
13 in mid-June or in late June Cyze asked you about
14 the restructuring --

15 A. Yes.

16 Q. -- did you -- did you misrepresent to
17 him that there was or there was not or did you
18 just refuse to answer?

19 A. No. Stephanie Streeter is pretty --

20 was and probably still is pretty clear that it

21 is -- if it's not approved and you're discussing

22 something it's not -- it hasn't been approved, so

23 there is no plan, there is no course of action

24 until she and/or the Board of Directors approved

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1 it.

2 And we -- my experience at Banta and
3 my experience at Donnelley prior to that was we
4 reviewed structural change annually.

5 We talked about buying companies,
6 selling companies, closing divisions,
7 consolidating divisions, and sometimes those
8 discussions led to implementation and action and
9 other times they were tabled.

10 Q. Okay.

11 A. And as of the time I spoke to Jim
12 Cyze I didn't know what was going to happen.

13 Q. So you had no reservations about
14 telling him, "You don't know what you're talking
15 about"?

16 A. No, I had reservations, because I
17 felt -- I felt that he had asked me a direct
18 question and my answer was no, there is -- we are

19 not currently going to restructure or something to

20 that effect.

21 Q. As you sit here today, and I see that

22 the handwritten notations that I think are

23 Stephanie Streeter's were in the documents that

24 you reviewed, do you know whether or not Stephanie

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1 Streeter talked to Madison Dearborn Partners about
2 going private?

3 A. Are you talking about the document
4 you gave me?

5 Q. June 29th.

6 A. I don't believe I've ever seen this
7 prior to you handing it to me.

8 Q. It was in the documents that you
9 reviewed before your deposition.

10 A. I don't recall ever seeing it.

11 Q. Okay.

12 A. If it's in those documents, we may
13 not have reviewed it. Maybe Mike had it.

14 MR. BOWEN: It may have been. I
15 don't recall it being in there.

16 MR. CARPONELLI: Okay. It's in there
17 as a dep exhibit for somebody's deposition.

18 MR. BOWEN: If it was a deposition

19 exhibit, then it was in there.

20 MR. CARPONELLI: Yes.

21 MR. BOWEN: Okay. But it was --

22 MR. CARPONELLI: Not specifically

23 reviewed, but that's not necessary.

24 MR. CARPONELLI Q. Do you remember

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1 that KEESA analysis document that was dated in
2 '06?

3 THE WITNESS A. Yes, the one that
4 you --

5 Q. Could that have been prepared by
6 Price, Waterhouse, Cooper?

7 A. It could have been.

8 Q. Were they your accountants?

9 A. I don't know if they were our
10 corporate accountants or if they were a consultant
11 to the company.

12 I don't remember. For some reason I
13 think that Deloitte & Touche may have been our
14 accounting firm.

15 Q. But did Price, Waterhouse, Cooper do
16 work for Banta?

17 A. I know that they did do work for
18 Banta, but I didn't remember actually working with

19 them. No, they did.

20 Yes, they provided some executive

21 financial counseling services, and so I met them

22 prior to, you know, my termination in January of

23 '07.

24 Q. Okay. Attached to my complaint is

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1 the Buck Report, and I know it's part of the
2 documents that were reviewed by you before your
3 deposition.

4 Do you know who ordered the Buck
5 Report?

6 A. No, and I had not seen it prior to
7 Mr. Bowen. Well, I believe it was actually
8 attached to your complaint.

9 Q. Yes.

10 A. And that was the first time I ever
11 saw it.

12 Q. Yes.

13 A. And then the second time I saw it was
14 when Mr. Bowen showed it to me.

15 Q. Okay. So you were not a part of
16 ordering it, reviewing it, studying it,
17 understanding it, or knowing what the purpose of
18 it was?

19 A. No, I had never seen it until --

20 Q. A compound question.

21 A. No to all of the above --

22 Q. All right.

23 A. -- until I saw the complaint.

24 Q. Okay. Had Banta ever had a

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1 relationship with Madison Dearborn Partners, as
2 far as you know?

3 A. Not that I am aware of.

4 MR. CARPONELLI: This document,
5 before I mark it I need to know what it is,
6 because it may be that this is a privileged
7 document that shouldn't be marked.

8 Mike, will you look at that?

9 Here's a copy for you. (Indicating)
10 I don't know what this document is, so
11 that's my big question.

12 And you let me know what it is,
13 because it appears as though there's a
14 1/16/2008 confidential draft.

15 MR. BOWEN: Yes, that's the -- that's
16 a puzzle. This was not generated in the
17 course of this litigation.

18 MR. CARPONELLI: Okay.

19 THE WITNESS: It's possible that Ron

20 was the one who took these comments.

21 MR. BOWEN: But it could have been --

22 it could have been anyone.

23 THE WITNESS: I agree. I don't know.

24 MR. BOWEN: And I'm just asking.

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1 THE WITNESS: Yes.

2 MR. BOWEN: I mean, you weren't
3 specifically advising -- providing comments
4 to counsel?

5 THE WITNESS: Not that I recall.

6 MR. BOWEN: This is -- we have no
7 basis for believing that this is a
8 privileged document.

9 MR. CARPONELLI: Okay. So let's mark
10 it then.

11 MR. BOWEN: Okay.

12 MR. CARPONELLI: Can you mark this?

13 (Whereupon said document was
14 marked Deposition Exhibit No.
15 20 as of 1/8/09.)

16 MR. CARPONELLI Q. Mr. Allen, is this
17 someone's rendition of your position and comments
18 made at the CMC meeting in May?

19 THE WITNESS A. No.

20 Q. No. What do you understand this to

21 be?

22 A. If you look at the second page, the

23 draft for immediate release, it is about a

24 September 2006 --

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1 Q. I'm sorry. Hold on.

2 (Pause.)

3 A. So if you look at Page 2, this is a
4 draft of -- so if you take a look at the second
5 page, this is a draft of a corporate announcement
6 that was dated September of 2006, and based on a
7 quick review of it it looks to be the draft -- a
8 draft of what we released associated with the
9 September earnings release, and at the same time
10 we were talking about the second phase of the
11 print sector restructuring and the annual cost
12 savings associated with that.

13 We talked about signing a new
14 five-year contract with Hewlett-Packard, a special
15 one-time dividend.

16 The first page appears to be my
17 comments provided to someone -- and I don't
18 remember whom -- by telephone about the release.

19 Q. Okay. Got it. And beneath it

20 attached to it is a release that talks about the

21 \$16 dividend that was given out by the

22 corporation, you know, which was --

23 A. If you go to Page 3, it talks --

24 Q. Yes.

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1 A. -- about the cost improvements and
2 the print sector restructuring and how we were
3 moving on with that and getting deeper and that
4 here we're talking about saving 27 million dollars
5 in 2007 and 35 million dollars in 2008.

6 And I think earlier you'll remember I
7 told you that our July announcement was really
8 just kind of the first step of a much broader
9 restructuring.

10 Q. Do you know what the purpose of the
11 \$16 per share dividend was?

12 A. I wasn't in meetings about that.
13 Afterwards the way it was described to me was we
14 had -- we had a very strong balance sheet, our
15 cash position exceeded our debt position, and that
16 after the Cenveo overture to us in August this was
17 a way of delivering shareholder value to the
18 market and demonstrating our strength.

19 Q. And also making you less attractive

20 to a hostile takeover, having, you know, depleted

21 cash in that regard, would you agree?

22 A. I don't -- I don't know enough about

23 it to know.

24 Q. Okay. Before I mark this I'm going

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1 to ask you, is this your handwriting?

2 A. It is.

3 MR. CARPONELLI: Mark this, please.

4 (Whereupon said document was

5 marked Deposition Exhibit No.

6 21 as of 1/8/09.)

7 MR. CARPONELLI Q. Is this document

8 7/14 of '06?

9 THE WITNESS A. Yes.

10 Q. And you were directing this to Mark

11 who?

12 A. Mark Deterding.

13 Q. Okay.

14 A. This is a set of notes I had made to

15 myself as I was flying to Minneapolis to meet with

16 Mark Deterding.

17 Mark was the catalogue group

18 president reporting to me. He's the gentleman I

19 earlier mentioned that he was demoted.

20 And this is more or less, if you

21 will, the outline of what I wanted to say to Mark.

22 Q. Did you give this document to him?

23 A. No.

24 Q. It says To Mark D?

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1 A. Yes. This was not given to Mark.
2 This was -- I don't -- the sheet of paper says
3 that, but this is basically -- you could think of
4 it as my talking points, my script as to what I
5 was going to communicate to Mark.

6 Q. Okay.

7 A. I have a habit of when I have to
8 communicate, you know, bad news, is I kind of want
9 to think through how I want to say it.

10 MR. CARPONELLI: Okay.

11 MR. BOWEN: Steve, do you have extra
12 copies of that?

13 MR. CARPONELLI: Did I not give you a
14 copy?

15 MR. BOWEN: No.

16 MR. CARPONELLI: I'm sorry. There's
17 your copy, and this is mine. (Indicating)
18 And what is that number?

19 MR. BOWEN: Twenty-one.

20 MR. CARPONELLI: Would you mark this,

21 please?

22 (Whereupon said document was

23 marked Deposition Exhibit No.

24 22 as of 1/8/09.)

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1 MR. CARPONELLI Q. Do you recognize
2 this document?

3 THE WITNESS A. I do.

4 Q. Who was it prepared by?

5 A. I believe it was prepared by me.

6 Q. Okay.

7 A. I haven't read -- I'd have to go back
8 and look at the very back, but it looks like the
9 first half of it was prepared by me.

10 We talked earlier about the NBI Q&A.
11 You gave that to me earlier.

12 Q. Yes.

13 A. And I told you at the time I don't
14 know who actually typed up that document, but the
15 first couple of pages, 8966 through 8974, would
16 have been created by me.

17 Q. Okay. Will you look at D8975 through
18 8977?

19 A. Eighty-nine seventy-five through
20 seventy-seven. Yes, this is the same document we
21 talked about earlier.

22 Q. Okay. Now, this document, in light
23 of the other documents in this group exhibit, does
24 this lead you to believe that this was the final

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1 questionnaire that was circulated?

2 A. No, to me this looks like -- all of
3 this looks like a draft. If you see the amount of
4 comments, there are some changes, there are some
5 edits throughout it.

6 You'll also notice that this talks
7 about the July 25th conference call. The
8 conference call occurred on July 21st, not on July
9 25th.

10 And you'll see that there are other
11 areas where there are things that are kind of left
12 blank that needed to be filled out. You know,
13 there are some question marks.

14 So this was -- I testified earlier
15 that between July 4th and July 20th I worked with
16 corporate communications and Frank Rudolph, V.P.
17 of HR, in developing a communication plan and an
18 implementation plan and that once we got beyond

19 July 12th I shared that communication strategy
20 with Bob Kreider and Dan Thornton, so that we
21 could be prepared to send material out to people,
22 hold the conference call, etc.
23 This is -- this looks like it's a
24 working document.

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1 Q. All right. Would you look at the
2 last page, 8982?

3 A. Yes.

4 Q. Like about the fifth line, Peter
5 called?

6 A. Yes.

7 Q. What is that referring to?

8 A. This looks like it is -- I don't
9 recall writing this. It looks like this is our
10 notes that I made at the restaurant when talking
11 to Kim Williams on the night of July 20th when she
12 called me and told me that Todd Baridelli had
13 called Andy Johnson in the Kansas City plant, that
14 Ritt Schiano had been called, that Ritt call Andy,
15 that Peter Hanson had called.

16 It's got, you know, the details.

17 They knew about Kim and Jim being eliminated.

18 They knew Mark Deterding was being demoted and

19 moving into operations.

20 Todd got blood info, blood-of-sales.

21 Q. What does blood-of-sales mean?

22 A. What that means to me, Todd was a

23 sales manager for Peter Hanson at Cadmus, and that

24 Todd was threatening to use this information in

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1 the marketplace the following day.

2 Q. Let me ask you a question. What time
3 did you meet with Cyze?

4 A. Between 4:00 and 5:30.

5 Q. Okay. This note says Peter called
6 three-ish to 5:00 P.M. Central time.

7 A. Yes.

8 Q. So would that have been -- if he
9 called at 3:00 he couldn't have got the
10 information from Cyze, because Cyze didn't get the
11 information 'til 4:00.

12 A. Well, I don't know what approximately
13 3:00-ish means. Five P.M. Central time -- I don't
14 know what three-ish means in this case.

15 Q. Well, it looks like it says three-ish
16 to 5:00 P.M. So if Peter called in at 3:00 the
17 information couldn't have come from Cyze, is that
18 correct?

19 And these are your notes.

20 A. That's not how I read it. It says up

21 above that Todd Baridelli called in to Andy

22 Johnson at 5:30 Kansas City time.

23 That would be 7:00-ish, I guess, on

24 the east coast. I don't know what the "ish" means

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1 in these notes.

2 Q. Yes, but I'm talking about the Peter

3 Hanson call.

4 A. Right.

5 Q. That Peter Hanson called between 3:00

6 and 5:00 Central time.

7 A. I don't know that three-ish dash 5:00

8 P.M. is that indication. I don't know what

9 three-ish means in this note.

10 Q. Okay. Would you agree with me that a

11 reasonable interpretation would have been that

12 Peter Hanson called at 3:00 o'clock talking about

13 this information, details, K and J eliminated?

14 And, of course, K and J refers to?

15 A. No. You want me to agree with your

16 interpretation of my document, which I've told you

17 I can't agree that that's how I would interpret

18 it.

19 Q. Okay. But nonetheless, it says Peter

20 called three-ish to 5:00 P.M.?

21 A. I don't know what that three-ish

22 reference means.

23 Q. Okay.

24 A. I don't recall what it means.

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1 Q. And blood-of-sales means what?

2 A. As I recall, Todd Baridelli, who
3 worked for Peter Hanson, and both of which were
4 former executives at Banta, were saying, "I got
5 this information, we're using this information
6 with our customers, we're going to, you know, take
7 it into the marketplace, information is the
8 blood-of-sales," quote unquote.

9 In other words, they were going to
10 use it with our customers against us.

11 Q. What does the last bullet point mean,
12 late last? Late last what?

13 A. It looks -- at 9:30 Central Standard
14 time, I believe that is when I spoke -- finally
15 spoke to Jim.

16 I called Jim and left him a
17 voicemail, I believe, at 9:05. MVX is my
18 handwriting for voicemail.

19 And then it looks like I left him

20 another voicemail at 9:16 P.M., and then --

21 Q. Where is -- where is that? Where is

22 that?

23 A. On the right-hand side.

24 Q. Okay. Nine oh five voicemail?

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1 A. And then 9:16 P.M. I mentioned
2 earlier I called him back and I left him another
3 voicemail.

4 Q. Okay.

5 A. I had spoken to his daughter, and I
6 believe it was between those two calls. I called
7 his cell phone, left him a voicemail, I called his
8 home, spoke to his daughter, and I called him
9 again and left him another voicemail, at which
10 point in time I said, "I need you to call me."

11 He called me then.

12 Q. Okay. Now, let's go through this.
13 You're making this note the next day?

14 A. I don't know when I made this note.

15 Q. Because it said late last 9:30 CS
16 time.

17 A. That's a reasonable reading, so that
18 say maybe I was making this the next day.

19 Q. Okay. And it says called from Peter.

20 What does that mean?

21 A. Called from Peter. I don't recall.

22 Q. Okay.

23 A. I was --

24 Q. Do you see where you say "don't say

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1 anything"?

2 A. Yes.

3 Q. Is that you're telling Cyze don't say

4 anything at 9:30 at night?

5 A. I don't -- I don't -- I don't know.

6 If this -- I think your -- I think your point is

7 a -- is a good one, that it says -- late last 9:30

8 Central Standard time would imply to me that I was

9 writing this the next day.

10 I may have been on the phone with Ron

11 Kneezel or Stephanie Streeter while creating it,

12 and that, you know, I told him, Jim, as I -- as I

13 remember the conversation with Jim, when I finally

14 got Jim on the phone I told him about the calls

15 from Peter and Todd Baridelli into our

16 organization and that I told him not to say

17 anything, I don't want him going out with this

18 information, and that we are still going forward

19 with the Tuesday announcement.

20 Q. Okay.

21 A. Now, we made the decision that we

22 were going out with the announcement that Friday.

23 Q. Okay. So you told him on Wednesday,

24 the 20th?

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1 A. No, that was a Thursday.

2 Q. Thursday. So these notes could have
3 been made on Friday?

4 A. They could have been made Thursday
5 night or they could have been made Friday, Friday
6 morning.

7 Q. Before the --

8 A. Friday morning.

9 Q. Okay.

10 A. I don't recall what time on Friday we
11 went public with it.

12 Q. Does your -- does your last notation
13 on the left say Tuesday announcement?

14 A. Yes.

15 Q. Okay.

16 A. Tuesday was probably the day after
17 the Board meeting when we came -- we were coming
18 out with it.

19 Q. Okay. And it says don't say
20 anything. Could that have been your advising Cyze
21 not to say anything?
22 A. Yes. These notes could have been the
23 result of a conversation I had with, you know, Ron
24 Kneezel first thing in the morning on Friday.

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1 Q. Okay.

2 A. So I could have said, "Okay, Ron, you
3 know, now what are we going to do?" I got in the
4 office and was going through, and these could have
5 been my extemporaneous notes based on a
6 conversation I was having with Ron.

7 Q. Okay. Although we know here that you
8 made a voicemail message at 9:05 and another one
9 at 9:16?

10 A. And the reason I remember those
11 numbers are precise is because I remember looking
12 at my cell phone.

13 Q. Okay.

14 A. At the -- at the dialed call number.

15 Q. What is that exhibit number?

16 A. Twenty-two.

17 MR. CARPONELLI: Twenty-two. Thank
18 you. Last exhibit. Will you mark this one

19 as 23?

20 (Whereupon said document

21 was marked as requested.)

22 MR. CARPONELLI Q. Is this a draft of

23 the announcement regarding the print sector

24 reorganization?

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1 THE WITNESS A. This appears to be a
2 draft of the organizational announcement, and it
3 was a letter that was going to go out from
4 Stephanie Streeter and from me.

5 Q. Okay. Did it ever go out?

6 A. I don't recall specifically. I
7 believe this went out, but I don't recall.

8 Q. The note up on top, is that your
9 handwriting?

10 A. Yes, that's my handwriting.

11 Q. And are you trying to decide who is
12 going to be the recipient?

13 A. Yes. Somebody would have sent this
14 to me most likely via e-mail, and this was an
15 attachment announced internally.

16 And that little chicken scratch in
17 the first paragraph and the circle at the bottom
18 around the -- adding the S, that's my handwriting.

19 It looks like I was preparing for a
20 conference call with somebody and say, okay, who
21 exactly is going to receive this, who are the
22 recipients, so that I could make sure that I was
23 reading it with the proper lens.
24 Q. You were not asked to make an

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1 overture to Mark Engelson at any time?

2 A. No.

3 Q. Did Engelson -- do you know whether

4 Engelson approached Banta or someone from Banta

5 approached Engelson?

6 A. I don't remember. The only way I

7 would have known that is through reading the

8 merger agreement.

9 It's probably detailed there.

10 Q. Okay. Stephanie didn't share that

11 with you?

12 A. Not that I recall.

13 MR. CARPONELLI: Okay. I have no

14 further questions.

15 MR. BOWEN: I have a few questions

16 for you.

17 CROSS-EXAMINATION

18 BY MR. BOWEN

19 Q. Where did Peter Hanson work in July

20 of 2006, if you know?

21 A. Peter Hanson worked for Cadmus

22 Communications. I believe he was either a

23 president or an EVP by title running their

24 publishing services sector, which was the vast

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1 majority of their printing business.

2 Q. Where is Cadmus Communications, or in
3 July of 2006 where was the Cadmus Communications
4 facility where his office was located?

5 A. Well, I don't know where his office
6 was located. Their corporate headquarters was in
7 Richmond, Virginia, as I recall.

8 Q. Okay. You mentioned that you had --
9 that your title at Banta was president of the
10 print sector, is that correct?

11 A. Yes.

12 Q. Did you also have the title of
13 executive vice-president at the corporate level?

14 A. I don't believe I carried the
15 executive vice-president title at Banta.

16 Q. Okay. You testified in some detail
17 about your prior experience before Banta. In the
18 course of your career that you described, how many

19 restructurings have you been involved in?

20 A. In the nineteen to twenty years that

21 I have been in management I have either led or

22 participated in a restructuring of the business

23 unit I was involved in probably about every three

24 years, so that would be about seven or eight

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1 times.

2 They've been small ones. I've
3 testified about in 2004 we formed the literature
4 management group.

5 I would call that a restructuring.
6 We were taking people and assets away from the
7 book group.

8 They've been as large as a three
9 hundred million dollar capital appropriation when
10 I was at Donnelley that consolidated ten printing
11 plants into eight and took five printing business
12 units and consolidated them down into two
13 management structures, so they kind of ranged.

14 Q. And can you give us a -- in terms of
15 the number of people involved sort of the range
16 that would be covered by the scale of these
17 various restructurings that you were involved in?

18 A. The largest would have been at R.R.

19 Donnelley. And I'm not sure. Are you asking how
20 many people were involved in the organizations or
21 who were impacted?

22 Q. I'd say let's start with who were
23 impacted, who lost their jobs or had other
24 deleterious impacts.

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1 A. I think the largest one would have
2 been back in about 1996, when we closed two plants
3 and consolidated five business units.

4 That was at probably 1,000 to 1,500
5 employees.

6 Q. And which, if any, of these
7 restructurings prior to the one in 2006 at Banta
8 was followed by a merger or acquisition of the
9 company that you -- that had been restructured?

10 A. None.

11 Q. Let's focus on your for a moment --
12 before we get to that, you were asked in some
13 detail about whether you made disparaging comments
14 about direct marketing.

15 To what extent, if at all, were
16 capital investment requests on the table or
17 pending at Banta during the year 2006?

18 A. I went -- take a step back in the

19 process. We would budget capital appropriations,
20 and then if they exceeded a certain amount or if
21 they had been not anticipated in the original
22 budget we would go to our Board of Directors and
23 seek approval for all projects.
24 I went to our Board of Directors

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1 multiple times in 2006 for large projects as well
2 as unbudgeted projects.

3 Q. And to what extent, if at all, did
4 the capital projects in support of which you went
5 to the Board in 2006 include capital projects for
6 direct marketing?

7 A. We went to the Board at least once --
8 I actually think it was twice -- requesting
9 capital.

10 I believe the first one was budgeted
11 and the second one was not. The direct marketing
12 group was a business that we were investing in.

13 Q. And were you -- when you went to the
14 Board were you supporting these capital
15 investments in direct marketing, opposing them, or
16 simply referring them without taking a position?

17 A. I was recommending them. I would --
18 I would work with the business unit presidents and

19 their staffs to put together the projects. I

20 would then approve them.

21 Then Stephanie would have to approve

22 them, and then I would take them to the Board and

23 I would present them on behalf of the business

24 units, and then the Board would have to approve

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1 them if they were unbudgeted or in excess of a
2 certain capital dollar amount.

3 Q. And do you recall what the
4 approximate dollar level of the capital
5 investments in direct marketing that you were
6 supporting before the Board during the year 2006
7 was?

8 A. It would have been several millions
9 of dollars. I would say less than ten million
10 dollars.

11 Between five and ten million dollars
12 is what I recall.

13 Q. Okay. Let me focus -- go ahead.

14 A. That's prior to the July Board
15 meeting as part of the restructuring. And as we
16 moved forward there were other capital
17 appropriations that we anticipated.

18 When I'm talking about five to ten

19 million dollars worth of capital, that would have

20 been the first six months of the year.

21 Q. Okay. Let me just try to nail down

22 your perceptions about where things were as the

23 restructuring proposal was working its way through

24 Banta in the first half of 2006.

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1 To what extent, if at all, were you
2 aware of any feeler or overture from any other
3 company about acquisition of Banta?

4 A. I wasn't aware of anything until
5 August 10th or 11th, when I learned of the public
6 letter that Cenveo distributed, about any
7 overtures toward Donnelley -- toward Banta.

8 Q. Prior to learning about that letter
9 from Cenveo did you have any feeling about the
10 plausibility of the idea that Cenveo might go
11 after Banta?

12 A. Prior to learning of that letter I
13 never considered the possibility of someone trying
14 to acquire Banta.

15 Q. Well, let's focus specifically on
16 Cenveo. Are there any specific reasons why you
17 viewed Cenveo as not a plausible suitor?

18 A. Well, as I've testified earlier, one

19 of the key cornerstones or the key colors of our
20 corporate strategy was to be involved in
21 evaluating acquisitions to see if we could add
22 acquisitions that met our strategic hurdles and
23 were consistent with our strategic direction, so
24 we were constantly looking at and evaluating other

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1 targets from our own perspective.

2 Cenveo was never considered a target

3 by us for a couple of reasons and by -- I'll

4 specifically say by me.

5 Much of Cenveo's business -- there

6 was very little overlap between Cenveo's business

7 and Banta's business.

8 Much of Cenveo's business was in the

9 production of paper envelopes for direct mail, and

10 we didn't do any of that, and we didn't even mail

11 those kinds of envelopes.

12 The other part of their business was

13 small regional commercial printing businesses, and

14 to the extent that we had those in Banta they were

15 all what I call subscale plants and they were on

16 the list for either being fixed or shut down or

17 sold, so the idea of merging and acquiring a

18 company that had more of those problems would have

19 been an issue.

20 And then, lastly, Cenveo wasn't a

21 particularly strong company financially.

22 Q. Okay. And how about R.R. Donnelley?

23 Did you have any views in the first half of 2006,

24 through July, about whether R.R. Donnelley might

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1 make a run at Banta?

2 A. Obviously you know my background. I
3 knew R.R. Donnelley extremely well. I didn't
4 consider R.R. Donnelley to be interested in Banta.

5 But one of the things that was
6 occurring at that time, as I recall it -- and I --
7 and I'd have to -- I'd have to do some research to
8 confirm this, but there was -- there was -- there
9 were news reports in the media about R.R.
10 Donnelley considering taking themselves private,
11 and so I would never have thought about them
12 trying to buy us.

13 Mark Engelson, who I didn't know at
14 the time, but I would listen to his conference
15 calls as a competitor and as a former employee, he
16 would often talk about how printing is the cash
17 cow and we're going to take the money out of the
18 printing business and we're going to redeploy it

19 into this business process outsourcing.

20 And the acquisitions they were making

21 at that time were in India and in Europe and they

22 weren't really in printing, so I never would have

23 considered R.R. Donnelley to be interested in

24 Banta.

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1 Q. What was your reaction in August when
2 you got word about Cenveo's letter offering to
3 purchase Banta?

4 A. I was floored. I was on the phone --
5 this is after the restructuring had occurred and
6 Jim and Kim weren't, you know, working. And I was
7 on the phone with Bob Kreider and Dan Thornton.

8 It was an early morning call, 7:00 or
9 7:30 in the morning as we were talking, and Dan
10 Thornton's BlackBerry buzzed, and he had just
11 received a Google alert, if you know what I mean,
12 and he said, "Oh, my gosh," or something to that
13 effect, and he read to Bob Kreider and I the
14 public letter from Bob Burton to Stephanie
15 Streeter about being interested in acquiring the
16 company.

17 That in and of itself is a pretty
18 dramatic event, but in addition to that I remember

19 being shocked because Stephanie was on vacation,

20 and I thought how are we going to respond to this

21 when Stephanie's, you know, hiking in the

22 mountains and we can't even get her on the cell

23 phone.

24 Q. Now, the reorganization plan, the

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1 restructuring plan that you were involved in
2 developing at Banta, if I understand the testimony
3 you gave in response to Mr. Carponelli's questions
4 correctly, that went through a number of stages in
5 the evolutionary process?

6 A. Yes.

7 Q. At any stage or to what extent, if at
8 all, at any stage in that process was your own
9 position at Banta in question as part of a
10 possible restructuring?

11 A. At the earliest stages. When I first
12 took the concept -- and this is before anything
13 was put down on paper.

14 When I first took the concept to the
15 meeting with Stephanie Streeter and Sara that
16 occurred in Stephanie's office in January/February
17 of 2006 I talked about restructuring the business
18 unit, and we talked about different ways of doing

19 it.

20 My recommendation at that time was to

21 consolidate much like what we ultimately ended up

22 with, but I also included in there a

23 recommendation that my job as sector president be

24 eliminated.

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1 It was my feeling that if I had five
2 people reporting directly to me and we were going
3 to go down to two Stephanie could add on -- could
4 handle one additional direct report.

5 In other words, she would have the
6 two presidents that reported in the print sector
7 reporting to her, which was a net one additional
8 person.

9 She didn't like that recommendation
10 but wouldn't take it off the table. So when --
11 and she tasked me to meet with Frank Rudolph to
12 develop a -- to put more meat on the proposal, and
13 I did that.

14 I met with Frank, and sometime in --
15 you know, over March, April, May we put together
16 the detail and presented kind of a recommendation
17 to Stephanie about how the organization would be
18 structured, and at that time I put on the table

19 that my position should be eliminated and that

20 Frank disagreed with me.

21 Stephanie ultimately made the

22 decision not to eliminate my position and told me

23 to continue to work with Frank on the policy and

24 the transition details that would be required if

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1 we were going to go forward with the
2 implementation.

3 Q. Now, recognizing that you tried to be
4 as objective as possible, even with your own
5 interests at stake, if you had had any notion that
6 an acquisition of Banta or a change in control of
7 Banta might be in the offing in the near future,
8 to what extent, if at all, would that have given
9 you any reservations about recommending that your
10 own position be eliminated before that happened?

11 A. If I understand your question, if
12 I -- if I knew that the possibility of Banta going
13 through a change of control was in the offing I
14 would like to think I would have proposed it
15 anyway, but I'm not sure, because I was subject to
16 the change of control agreement, and so by
17 recommending eliminating my own job prior to any
18 change of control I would have eliminated my

19 rights to the change of control agreement.

20 MR. BOWEN: That's all the questions

21 I have. Thank you very much.

22 REDIRECT EXAMINATION

23 BY MR. CARPONELLI

24 Q. Correct me if I'm wrong, Mr. Allen.

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1 You knew there was a rollback provision in the
2 change of control as it relates to the effective
3 date, didn't you?

4 A. I don't understand. What's a
5 rollback provision?

6 Q. A rollback provision where we talked
7 about the effective date, where even if you're
8 terminated after the acquisition or before the
9 acquisition as a consequence of it it gets rolled
10 back to the effective date.

11 A. I'm aware of that now. I think I
12 said earlier that I had read the document when I
13 signed it in January of 2004. The next time I
14 read the KEESA agreement was in August of 2006.

15 So during the time that we're
16 discussing, which is from, I assume, January of
17 '04 through July of '06, it was not common
18 knowledge to me of the rollback provision.

19 Q. It was not common knowledge?

20 A. I wouldn't have remembered it.

21 Q. But you understand that there was a

22 rollback provision?

23 A. I do now, yes.

24 Q. And had you been terminated even

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1 before a takeover, if it was otherwise arising in
2 connection with or as a consequence and
3 anticipation of, you would have been -- received
4 your KEESA benefits?

5 A. I now know that if I had -- if
6 Stephanie had accepted my recommendation and had
7 eliminated my job as part of the restructuring and
8 she had known about a merger possibility and it
9 happened within, I think it's 180 days --

10 Q. Right.

11 A. -- that the clause you and I
12 referenced a few minutes ago may have applied. It
13 would have probably applied.

14 But at the time that I was doing all
15 the work on the strat plan that was not --

16 Q. You didn't know about that?

17 A. I had access to the information and
18 I've read the -- I had read the KEESA when I

19 joined the company in January of '04, but it was

20 kept at home in files, and I didn't ever read it

21 again until after the Cenveo overture.

22 Q. Okay.

23 A. I promise you I read it after that.

24 Q. All right. We talked about Exhibit

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1 No. 15, the presentation to the Banta Board by

2 Goldman Sachs dated July 27, '04.

3 A. Yes. I have it right here.

4 Q. And I know you answered Mr. Bowen's

5 questions, but would you agree with me if you look

6 at Perspective on Banta at Page 11 that the --

7 strike that.

8 Let's look at a different page.

9 Would you agree with me that Exhibit No. 15 has at

10 Page 25 potential Banta merger partners listed,

11 R.R. Donnelley and Cenveo?

12 A. I see both companies' names on that

13 page that you're referring to.

14 Q. Okay. So at least Goldman Sachs and

15 at least the members of the Board of Directors of

16 Banta who received this report, whoever they may

17 have been -- I understand it was not you -- were

18 advised by Goldman Sachs that a potential merger

19 partner included Donnelley and Cenveo?

20 A. And the other names on this page.

21 Q. Exactly.

22 A. They were told that.

23 Q. Okay. And correct me if I'm wrong.

24 When did you do -- attempt the acquisition of

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1 Cadmus?

2 A. That would have been in, I believe,
3 2005, I believe.

4 Q. Okay. Will you look at Page 18?

5 A. Okay.

6 Q. Would you agree with me that the
7 Goldman Sachs document has listed in it a Section
8 3 called Acquisition of Cadmus?

9 A. Yes.

10 Q. So someone at Goldman Sachs who was
11 an anti-takeover consultant to Banta and/or
12 someone at Goldman Sachs -- at Banta was aware
13 that there was a potential for an acquisition of
14 Cadmus which you attempted and it didn't come to
15 fruition, and someone knew that there were
16 potential merger partners, including Cenveo and
17 R.R. Donnelley, as early as 2004?

18 A. My understanding is that we actually

19 approached Cadmus prior to my getting involved in,

20 I think it was 2005, so we had had earlier

21 conversations with Cadmus, and then we had them

22 again when I was involved.

23 As far as would I agree that Goldman

24 Sachs presented to our Board of Directors,

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1 assuming this document was presented -- and I
2 wasn't there, but the way this looks, this
3 document was presented by Goldman Sachs to our
4 Board of Directors, and they were making the pitch
5 that there were potential sale opportunities out
6 there.

7 Q. And, in fact, we know that Cenveo did
8 attempt a hostile takeover, which was
9 unsuccessful, and that there was a white knight
10 acquisition by R.R. Donnelley which closed on
11 January 10th of '07, is that correct?

12 A. Yes.

13 Q. And there was an attempt to acquire
14 Cadmus which was unsuccessful?

15 A. Yes, along with a few other potential
16 acquisitions.

17 MR. CARPONELLI: Okay. No further
18 questions.

19 RE CROSS-EXAMINATION

20 BY MR. BOWEN

21 Q. Let's go back to Page 25, the one
22 that's headed Potential Banta Merger Partners. Do
23 you see what I'm referring to, Mr. Allen?

24 A. I'm seeing the slide, yes.

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1 Q. Okay. And a merger partner --
2 actually, tell me if I'm right. Can a merger
3 partner be someone only -- would a merger partner
4 be limited to companies buying Banta, or could it
5 also include companies that Banta was buying?

6 A. Well, a merger doesn't connote which
7 direction that purchase or transaction is
8 occurring, so I'd have to read the rest of the
9 document or hear the voice-over to understand if
10 this was either way, but just this slide that
11 you're showing me right now could imply that we
12 could -- we could acquire them and merge them into
13 our organization.

14 Q. Okay. As, in fact, you did try to
15 acquire Cadmus?

16 A. Yes.

17 Q. And the only company listed on this
18 chart of potential Banta merger partners that is

19 smaller than Cadmus is Cenveo, am I correct, in

20 terms of its -- of the diluted equity market

21 capitalization?

22 A. At that time, according to this

23 chart, that's correct.

24 Q. Okay. And Cenveo at that time -- why

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1 don't you -- why don't you just tell us, what does
2 the chart show about the diluted equity market
3 capitalization of Banta as compared to Cenveo at
4 the time this chart was prepared?

5 A. Banta's market cap, according to the
6 time this chart was prepared, which was July 9th
7 of 2004, was one billion one hundred two million
8 dollars.

9 Cenveo's market cap at that same time
10 was a hundred and thirty-seven million dollars, so
11 we were maybe eight times larger from a market cap
12 perspective.

13 Q. Okay. And does -- the quantification
14 there that Banta was eight times or so larger than
15 Cenveo, is that, in your own judgment, consistent
16 or inconsistent with your perception that you've
17 testified to that Cenveo was not a likely
18 candidate to come after Banta?

19 A. It's very consistent.

20 Q. Explain why, please.

21 A. Cenveo was not a particularly -- they

22 were larger in revenue than this chart might

23 represent.

24 It's just that they were a poorly-run

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1 organization that did not have very strong
2 earnings, and if I remember correctly, they also
3 didn't have a very strong balance sheet, and
4 consequently the stock market's market
5 capitalization of it was such that it was 137
6 million dollars.

7 They were much more financially
8 strapped than we were, and they were not
9 performing well.

10 And you could say that about many of
11 the companies, you know, kind of to the right of
12 us, and I would also say some of these companies
13 weren't in our space.

14 We wouldn't -- I wouldn't have
15 advised any kind of a merger with a Bount, for
16 example. They are a financial printing company.

17 We don't -- we didn't do financial
18 printing. So that's why I believe this document,

19 as I said earlier, I think it's a sales pitch.

20 MR. BOWEN: Okay. That's all I have

21 for you.

22 REDIRECT EXAMINATION (Resumed)

23 BY MR. CARPONELLI

24 Q. Okay. Correct me if I'm wrong. Will

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1 you look at Page 22?

2 A. I assume of the Goldman Sachs
3 document?

4 Q. Yes.

5 A. Sale of Company?

6 Q. Yes. We're not talking about
7 anything other than Goldman Sachs saying here that
8 we're selling Banta to these potentials.

9 And it says on every page at the
10 bottom header Sale of Company, Sale of Company.
11 So when we're talking about a merger partner we're
12 talking about the sale of Banta.

13 We're not talking about the purchase
14 of anybody, are we?

15 A. It says Sale of Company on all these
16 pages.

17 Q. Okay. All right. And correct me if
18 I'm wrong. You have certainly seen in your

19 experience of 30 years in business where a smaller

20 market cap company has acquired a larger market

21 cap company in your past experience, is that

22 correct?

23 A. Yes.

24 Q. Okay. And in particular when you

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1 talk about -- for instance, on this Page 25 we see
2 that R.R. Donnelley has a seven billion dollar
3 market cap, Cenveo has only a hundred and
4 thirty-seven million, and then we look at
5 Quebecor/World, they have 2.8 billion, and they're
6 today in bankruptcy, isn't that correct?

7 A. That's correct.

8 Q. And Cenveo is not?

9 A. That's correct.

10 MR. CARPONELLI: Okay. No further
11 questions.

12 MR. BOWEN: Nothing further. We will
13 read and sign.

14 (Witness excused.)

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CENTRAL REPORTERS ASSOCIATED, LTD. (312) 630-2007

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS

3 JAMES M. CYZE,)

4 Plaintiff,)

5)

6 -vs-) No. 07-L-003638

7)

8 R.R. DONNELLEY & SONS COMPANY,)

9 et al,)

10 Defendants.)

11 _____)

12 I, MICHAEL BRENNAN ALLEN, being
13 first duly sworn, on oath say that I am the deponent in
14 the aforesaid deposition taken on January 8, 2009, and
15 that I have read the foregoing transcript of my
16 deposition, consisting of Pages 3 through 204
17 inclusive, taken at the aforesaid time and place, and
18 that the foregoing is a true and correct transcript of
19 my testimony so given.

20 _____
21 SUBSCRIBED AND SWORN TO

22 before me this _____ day

23 of _____, A.D. 2009.

19

20

21

22

Notary Public

23

24

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)

3

4 I, JUDY A. LANDAUER, CSR, a
5 Certified Shorthand Reporter and Notary Public within
6 and for the County of Cook and State of Illinois, do
7 hereby certify that heretofore, to-wit, on the 8th day
8 of January, A.D. 2009, personally appeared before me at
9 Suite 2800, 321 North Clark Street, in the City of
10 Chicago, County of Cook, and State of Illinois, MICHAEL
11 BRENNAN ALLEN, a witness called by the plaintiff in a
12 certain cause now pending and undetermined in the
13 United States District Court for the Northern District
14 of Illinois, wherein JAMES M. CYZE is the plaintiff and
15 R.R. DONNELLEY & SONS COMPANY, STEPHANIE A. STREETER,
16 and MICHAEL B. ALLEN are the defendants.

17 I further certify that the said
18 witness, MICHAEL BRENNAN ALLEN, was by me first duly

19 sworn to testify the truth, the whole truth, and
20 nothing but the truth in the cause aforesaid; that the
21 testimony then given by him was by me reduced to
22 writing by means of machine shorthand in the presence
23 of said witness and afterwards transcribed upon a
24 computer, and the foregoing is a true and correct

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1 transcript of the testimony so given by him as
2 aforesaid.

3 I further certify that after said
4 testimony had been so transcribed it was made available
5 to the witness for examination.

6 I further certify that the taking of
7 this deposition was pursuant to notice and that
8 there were present at the taking of the deposition
9 counsel as hereinbefore set forth.

10 I further certify that I am not
11 counsel for nor in any way related to any of the
12 parties to this suit, nor am I in any way interested in
13 the outcome thereof.

14 In testimony whereof I have hereunto
15 set my hand and affixed my notarial seal this 20th day
16 of January, A.D. 2009.

17

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JUDY A. LANDAUER, CSR
CSR License No. 084-000153
Notary Public, Cook County, IL

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CENTRAL REPORTERS ASSOCIATED
29 East Madison Street * Suite 1826
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(312) 630-2007

January 20, 2009

Mr. Michael A. Bowen
Foley & Lardner, LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5306

RE: Caption: Cyze vs. R.R. Donnelley
Deposition of: Michael Brennan Allen
Date of Deposition: 1/8/09
Transcript Length: 207 pages

Dear Mr. Bowen:

It is our understanding that you will arrange for the review of the above-entitled transcript by the witness. Accordingly, we are enclosing errata sheets and the original signature page with your copy of the deposition transcript.

Please note that the Rules of the United States District Courts provide that depositions may be used as fully as if signed if they remain unsigned for more than 30 days after having been made available to the deponents. We, therefore, would appreciate your handling this matter within the 30-day limit.

Please return the executed signature page and errata sheets, if any, to the above address. We will then distribute them to all counsel.

Very truly yours,

CENTRAL REPORTERS ASSOCIATED

cc: Mr. Stephen P. Carponelli

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